817.

SUPREME COURT OF THE UNITED STATES.

No. 134.

THE UNITED STATES, APPELLANTS,

vs.

JOHN A. SUTTER.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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Transcript of the proceedings in case No. 92—John A. Sutter, claimant, vs. The United States, defendant—for the place named "New Helvatia."

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

Be it remembered, that on this eighth day of March, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of John A. Sutter, for the place named "New Helvetia," was presented, and ordered to be filed and docketed with No. 92, and is as follows, to wit:

(Vide page 9 of this Transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *March 19th*, 1852.

In case No. 92, John A. Sutter, for the place named "New Helvetia," the deposition of Manuel Jimeno, a witness in behalf of the claimants, taken before Commissioner Hiland Hall, was filed.

(Vide page 17 of this Transcript.)

SAN FRANCISCO, *March 30th*, 1852.

In the same case the deposition of Juan Castañeda, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed.

(Vide page 15 of this Transcript.)

SAN FRANCISCO, *April 5th*, 1852.

In the same case the deposition of Francisco Arce, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed.

(Vide page 27 of this Transcript.)

SAN FRANCISCO, *April 8th*, 1852.

In the same case the deposition of John Bidwell, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed.

(Vide page 19 of this Transcript.)

SAN FRANCISCO, *June 4th*, 1852.

In the same case the deposition of John J. Viojet, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed.

(Vide page 21 of this Transcript.)

SAN FRANCISCO, *January* 19*th*, 1853.

In the same case the deposition of Antonio Suñol, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed.

(Vide page 28 of this Transcript.)

SAN FRANCISCO, *February* 3*d*, 1853.

In the same case the deposition of Samuel J. Hensley, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed.

(Vide page 23 of this Transcript.)

SAN FRANCISCO, *February* 17, 1853.

In the same case the deposition of Wm. E. P. Hartnell, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed.

(Vide page 35 of this Transcript.)

In the same case the deposition of Franklin Bates, Gilbert A. Grant, and John S. Fowler, witnesses in behalf of the claimant, taken before Commissioner Hiland Hall, were filed.

(Vide pages 32, 33 and 37 of this Transcript.)

SAN FRANCISCO, *March* 1*st*, 1853.

In the same case the counsel for the claimant filed the following motion, to wit:

(Vide page 161 of this Transcript.)

Which motion having been sustained, leave was granted to file the annexed petition.

Ordered, that the said annexed petition be recorded and filed among the papers in the case.

Which annexed petition is as follows, to wit:

(Vide page 11 of this Transcript.)

SAN FRANCISCO, *March* 28*th*, 1853.

In the same case the counsel for the claimant, Mr. Crittenden, presented the following motion, to wit:

(Vide page 162 of this Transcript.)

Which motion having been overruled, the prayer was denied.

SAN FRANCISCO, *July* 14*th*, 1853.

In the same case John Wilson, esq., counsel for I. H. Stover, presented the following motion, to wit:

(Vide page 153 of this Transcript.)

Motion taken under advisement.

SAN FRANCISCO, *July* 26, 1853.

In the same case, Commissioner Alpheus Felch delivered the opinion of the board, on the motion of the attorney of I. H. Stover, filed on the 14th inst., asking leave to contest the right of the claimant in said case, overruling said motion.

SAN FRANCISCO, *August* 17, 1853.

In the same case the deposition of Victor Prudon, a witness in behalf of the claimant, taken before Commissioner R. Aug. Thompson, was filed.

(Vide page 39 of this Transcript.)

SAN FRANCISCO, *October* 13, 1853.

In the same case the depositions of José Maria Covarrubias, Samuel Brannan, and P. B. Reading, witnesses in behalf of the claimant, taken before Commissioner Thompson Campbell, were filed.

(Vide pages 41, 43 and 47 of this Transcript.)

SAN FRANCISCO, *October* 17*th*, 1853.

In the same case the deposition of R. B. Buchanan, a witness in behalf of the claimant, taken before Commissioner Thompson Campbell, was filed.

(Vide page 51 of this Transcript.)

In the same case the deposition of John J. Vioget, a witness in behalf of the claimant, taken before Commissioner Thompson Campbell, was filed.

(Vide page 49 of this Transcript.)

SAN FRANCISCO, *October* 19, 1853.

In the same case the deposition of John S. Fowler, a witness in behalf of the claimant, taken before Commissioner Thompson Campbell, was filed.

(Vide page 53 of this Transcript.)

SAN FRANCISCO, *November* 1, 1853.

In the same case the deposition of John D. Marks, a witness in behalf of the claimant, taken before Commissioner R. Aug. Thompson, was filed.

(Vide page 59 of this Transcript.)

SAN FRANCISCO, *November* 4*th*, 1853.

In the same case the counsel for the claimant filed the following affidavit, to wit:

(Vide page 161 of this Transcript.)

SAN FRANCISCO, *March* 21*st*, 1854.

Case No. 92, on motion of the U. S. law agent, was ordered to be placed at the foot of the first class cases on the trial docket.

SAN FRANCISCO, *March* 22*d*, 1854.

In the same case the deposition of Abner Bryan, a witness in behalf of the United States, taken before Commissioner Peter Lott, was filed.

(Vide page 60 of this Transcript.)

SAN FRANCISCO, *March* 30*th*, 1854.

In the same case the deposition of Henry E. Robinson, a witness in behalf of the United States, taken before Commissioner Peter Lott, was filed.

(Vide page 66 of this Transcript.)

SAN FRANCISCO, *May* 9*th*, 1854.

In the same case the deposition of John Bidwell, a witness in behalf of the claimant, taken before Commissioner Peter Lott, was filed.

(Vide page 69 of this Transcript.)

SAN FRANCISCO, *June* 24, 1854.

In the same case the deposition of Samuel Kyburg, a witness in behalf of the claimant, taken before Commissioner Alpheus Felch, was filed.

(Vide page 80 of this Transcript.)

SAN FRANCISCO, *June* 28, 1854.

In the same case the counsel for the claimant filed the following stipulation, with a map marked Exhibit "X, Y, Z, No. 1," annexed thereto, as evidence in this case.

(Vide page 165 of this Transcript.)

SAN FRANCISCO, *July* 18*th*, 1854.

In the same case the counsel for the claimant read the petition and the papers in evidence, and additional testimony taken on both sides continued for to-morrow.

In the same case the deposition of Jacob P. Leese, a witness in behalf of the claimant, taken before the commissioners sitting as a board, was filed.

(Vide page 86 of this Transcript.)

To which deposition the U. S. law agent filed the following objections, to wit:

(Vide page 163 of this Transcript.)

In the same case the deposition of Joseph Clough, a witness in be-

half of the claimant, taken before the commissioners sitting as a board, was filed.

(Vide page 85 of this Transcript.)

In the same case the deposition of Abner Bryan, a witness in behalf of the United States, taken before the commissioners sitting as a board, was filed.

(Vide page 89 of this Transcript.)

In the same case the U. S. law agent filed a copy of the deposition of John A. Sutter, in case Charles Covillaud et al. vs. Stephen Field, in the district court of Yuba county, State of California, as evidence in this case, on behalf of the United States.

(Vide page 83 of this Transcript.)

In the same case the U. S. law agent filed copies of two documents in the recorder's office of Sacramento county, marked X, Y, Z, Nos. 1 and 2, as evidence in this case, in behalf of the United States.

(Vide pages 142 and 147 of this Transcript.)

In the same case the following order was made, to wit:

(Vide page 162 of this Transcript.)

In the same case the U. S. law agent filed the following bill of objections, to wit:

(Vide page 163 of this Transcript.)

SAN FRANCISCO, *July* 19*th*, 1854.

In the same case argument by the counsel for the claimant resumed, followed by the U. S. law agent, and continued for to-morrow.

SAN FRANCISCO, *July* 20*th*, 1854.

In the same case argument by claimant's counsel resumed, followed by the U. S. law agent, and concluded by the counsel for the claimant—case submitted and taken under advisement by the board.

SAN FRANCISCO, *Sept.* 1*st*, 1854.

In the same case the counsel for the claimant filed the following stipulation, to wit:

(Vide page 165 of this Transcript.)

SAN FRANCISCO, *March* 20, 1855.

Case No. 92 was ordered to be restored to the trial docket for re-argument, and the filing of testimony taken since its submission.

In the same case the depositions of Juan B. Alvarado and Henry L. Ford, witnesses in behalf of the claimant, taken before Commissioner Peter Lott, were filed.

(Vide pages 91 and 97 of this Transcript.)

In the same case the deposition of John J. Vioget, a witness in behalf of the United States, taken before Commissioner Peter Lott, was filed.

(Vide page 102 of this Transcript.)

In the same case the U. S. law agent filed an authenticated copy of Exhibit A A, annexed to the deposition of Samuel J. Hensley, in case No. 683.

(Vide page 151 of this Transcript.)

Case No. 92 was submitted on briefs, and taken under advisement by the board.

SAN FRANCISCO, *May* 15, 1855.

In the same case, Commissioner R. Aug. Thompson delivered the opinion of the board, confirming the claim.

(Vide page 167 of this Transcript.)

And the following order was made, to wit:

(Vide page 219 of this Transcript.)

SAN FRANCISCO, *August* 21*st*, 1855.

In the same case, the U. S. law agent filed the following motion, to wit:

(Vide page 221 of this Transcript.)

SAN FRANCISCO, *Oct.* 16, 1855.

In the same case, Commissioner R. Aug. Thompson delivered the decision of the board upon the motion filed heretofore, to wit, the 21st August last, by the U. S. asso. law agent, overruling the same.

Petition.

To the Honorable Hiland Hall, Henry J. Thornton, and James Wilson, United States Commissioners for the adjudication of California land claims.

The petition of John A. Sutter respectfully showeth: That on the 18th day of June, 1841, Juan B. Alvarado, then being the commandant general of the department of the Californias, duly appointed and commissioned by the Central Government of the Republic of Mexico, by virtue of and in conformity of *to* the power and authority for that purpose in him vested, upon the petition of your petitioner, then being a naturalized citizen of the said republic and resident of the said department of the Californias, did grant unto your petitioner, of the land on the borders of the river Sacramento, in the vacant lands of the northern frontier, eleven square leagues, as exhibited in the map or sketch annexed to the said petition, (a copy of which is also hereto annexed, marked "& 1,") without including the lands overflown by the swell-

ing and current of the rivers, and supposed to be bounded on the north by ("Las Tres Picas,") the then summits in 39° 41′ 45″ north latitude; on the east by the borders of the (Rio de las Plumas) Feather river; on the south by the parallel of 38° 49′ 32″ north latitude; and on the west by the river Sacramento, in and known as and called New Helvetia, (a copy of which grant is hereunto annexed, marked "B.")

That in accordance with the terms and conditions of the said grant, legal possession of the said land, according to the laws and customs of the said Republic of Mexico, was obtained by your petitioner, which possession has continued in your petitioner and his grantees undisturbed by any conflicting title or claim of any person whatsover from thence hitherto.

Your petitioner further shows unto your honorable board, that your petitioner so aforesaid in undisturbed possession of the said eleven square leagues of land on the 5th day of February, 1845, Manuel Micheltorena then being the commandant general of the department of the Californias, duly appointed and commissioned by the Central Government of the Republic of Mexico, by virtue of and in conformity to the powers and authority for that purpose in him vested, upon the petition of your petitioner, and his son John A. Sutter, junior, naturalized citizens of the Republic of Mexico and presidents of the said department of the Californias, did grant unto your petitioner and his son, John A. Sutter, junior, of the surplus of land lying within your petitioner's said ranch of New Helvetia, as laid down in the map which as aforesaid accompanied the grant thereof, twenty-two square leagues described upon the said map, a copy of which grant is hereto annexed, marked "C."

That in accordance with the terms of the said last mentioned grant, legal possession of the said land, according to the laws and customs of the Republic of Mexico, was obtained by your petitioner and his said son, John A. Sutter, junior, which possession has continued in your petitioner and his said son and their grantees undisturbed by any conflicting title or claim of any person whatsoever from thence hitherto.

Your petitioner further shows unto your honorable board, that subsequently to the making of the aforesaid second above mentioned grant, the whole interest of John A. Sutter, jr., became and was by proper conveyance and for a valuable consideration vested in your petitioner.

Your petitioner further shows, that the land claimed by him under and by virtue of the grants above mentioned has never been certified or surveyed by the surveyor general.

Your petitioner therefore prays your honorable board, that you will proceed to examine the right or title which your petitioner claims to possess to the said lands above described, together with such documentary evidence and testimony of witnesses as your petitioner shall

present to your honorable board in support thereof, and to decide upon the validity of the same.

CHITWOOD, EDWARDS & ROSE,
Counsel for Petitioner.

Filed in office March 8th, 1852.

GEO. FISHER, *Sec'y.*

Recorded Journal, vol. 1, pages 325 to 328 inclusive.

GEO. FISHER, *Sec'y.*

Petition.

To the Commissioners appointed to investigate and settle land claims in California:

John A. Sutter respectfully represents, that in the year 1839, by permission of Juan B. Alvarado, then governor of California, he settled upon and occupied a tract of land lying upon the American, Sacramento, and Feather rivers, and commenced erecting buildings thereon, and cultivating different portions of the land.

That with a view to present an application to the governor for a title to the land, he caused a map or plan of the land to be made as accurately as was then possible, designating on the map the lines within which was included the lands which he solicited; those lines being on the north, a line running east and west, and passing by or near the three buttes, and designated on the map as latitude 39° 32′ 45″; on the south, a line running east and west, crossing the Sacramento river about four miles below the mouth of the American river, and designated on the map as latitude 38° 49′ 32″; on the east, the banks of Feather river; a copy of which map is on file in this case, marked "B."

That on the 15th of June, 1841, he presented to the governor the original of said map, together with a petition in writing for a grant of eleven leagues of land in exact conformity to the map, not including the land periodically overflowed.

That this exception of the land, periodically overflowed, was made in his petition for the reason that the greater portion of the land in that section of country lying between the lines marked on the map as latitude 39° 32′ 45″, and latitude 38° 49′ 32″, is valueless in consequence of its being subject to annual overflow from the rise of the rivers; the only land of any value or fit for agricultural purposes being the high land in the immediate vicinity of the rivers.

That in order that it might clearly appear what land was intended to be asked for and what excluded, he designated the same on the map by a dotted line; the land petitioned for being that not subject to annual overflow, and lying between the said rivers and the said dotted lines, and that excluded being the portion lying outside of the dotted line, and marked "Tulares."

That the southern line of said tract of land, being the dotted line marked on the maps south of the American river, and north of the line called latitude 38° 49′ 32″, had been actually surveyed and marked out, and its position was well known.

That prior to the time of presenting his petition for a grant, he had opened a farm and made improvements at the place called "Hock Farm," on the western bank of Feather river, but had located his principal establishment on that portion of the tract which lies south of the American river, at which point he had commenced the construction of extensive and substantial buildings, and had engaged largely in cultivation of the land; and it was this latter settlement which he had called and which was known by the name of "New Helvetia," and from which the whole tract took its name.

That on the 18th of June, 1841, the said gov., Juan B. Alvarado, acting under authority vested in him by the laws then in force, granted him, in accordance with his petition, for his own benefit and that of twelve families, the said eleven leagues of land, within the limits marked out in the said map, without including the lands inundated by the flood and currents of the rivers. The boundaries being on the north the three buttes (Las Tres Picas) and latitude 30° 41′ 45″ N., on the east the banks of Feather river, on the south, latitude 38° 49′ 32″ N., and on the west the Sacramento river, all of which will more fully appear on reference to the copy of said petition and grant on file in this case, marked "A."

That after said grant was made, he continued in the occupation of the land, and at great expense erected, south of the American river, at his establishment of "New Helvetia," a strong and extensive fort, and maintained there a garrison sufficient for the protection of the settlement and the frontier.

That he complied with all the conditions of the grant, and that the results of settlement upon the frontier, in the civilization of the Indian tribes, in the protection which it gave to the frontier, and in the emigration to this point, which it encouraged and secured, were highly beneficial to the whole country, and fully answered the expectation entertained by the government when it sanctioned and promoted his enterprise.

He further represents, that at the time of making the said map which accompanied his petition for the land, the position of the point at which the southern line of the tract leaves the Sacramento river was determined by observation as accurately as it could then be done, but he is now advised that the determination of the latitude of said point, as made at that time and designated on the map, was erroneous, in consequence of imperfections in the instruments used in making the observation; and that the latitude 38° 49′ 32″, instead of crossing the Sacramento river at that point, as it was supposed to do, would intersect it north of the American river, thereby excluding all that portion of the tract lying south of said American river.

He represents, that this portion of the land south of the American river was the part of the tract on which his principal establishment was actually located; that it was intended to be and was included in the land petitioned for; that it was always understood to be so included by the petition of the government and by the people of the

country; that it lies north of the line actually located as the southern line of the grant, and so designated on the map; and that it was in reference to the actual position of the lines laid down upon the map that the grant was made.

For these reasons, and upon the facts herein before stated, he insists that his rights cannot be impaired by an error in the reference to said line by its latitude.

He knows of no other claim to any portion of the land now claimed by him.

In support of his claim he relies upon the papers on file in this case, and such evidence as he may offer.

He prays the confirmation of his title according to the actual position of the lines, as located and laid down on the map, and according to the true intent and meaning of the grant, to wit, to the extent of eleven leagues, lying upon the banks of the Sacramento, American and Feather rivers, between said rivers and the dotted line marked upon said map as the boundary of the overflowed and barren lands, and between the line marked 39° 32′ 45″ and the three buttes on the north, and the line marked 38° 48′ 32″, as designated on the map, on the south, the southern line of the tract so confirmed to him to be the line represented on the map south of the American river, as it was actually surveyed and marked out.

CRITTENDEN, JUGE & MARTIN,
Atty's for Claimant.

Filed in office March 1, 1853.

GEO. FISHER, *Secretary.*

Recorded in vol. 2 of Petitions, on pages 40, 41, 42, and 43.
GEO. FISHER, *Secretary.*

Deposition of M. Castanada.

OFFICE OF THE BOARD OF COMMISSIONERS OF CALIFORNIA LAND CLAIMS, *San Francisco, March 30th*, 1852.

On this day, before me, Henry J. Thornton, one of the commissioners for ascertaining and settling private land claims in the State of California, came Juan Castanada, a witness produced in behalf of the claimant, John A. Sutter, No. 92 on the docket of the commissioners, being duly sworn testified as follows, his evidence being given in the Spanish language, and interpreted by Geo. Fisher, secretary.

The U. S. law [agent] being notified, was present.

Questions propounded by the Claimant.

1st question. What is your name, age, and place of residence?

Ans. My name is Juan Castanada; my age is about 45 years, and my present residence Sonoma.

2d question. Do you know Manuel Micheltorena, and offices he held, civil and military, in Alta California?

Ans. I know him; I came with him to this country; he was the civil governor and the commander-in-chief of both Californias.

3d question. When did he first come to Upper California to exercise his offices, and how long did he continue in the same in Upper California?

Ans. He arrived in September, 1842, and continued until April or May, 1845.

4th question. Do you know John A. Sutter, and how long have you known him, and where did he live when you first became acquainted with him?

Ans. Yes, I know him, and have known him since 1839; when I first knew him he lived in Sacramento; it was then called New Helvetia.

5th question. Do you know anything about a petition presented by said Sutter in behalf of himself and his son to the governor, Micheltorena, for a grant of land? and if so, state all you know about it.

Ans. I know that Sutter presented a petition as above stated, which petition was acted on in the usual form and granted.

6th question. Was any title granted by Micheltorena upon that petition? Do you know who drew the deed?

Ans. I do know that a title was granted by Governor Micheltorena to Capt. Sutter. I drew the deed myself, being his aid-de-camp; was with him at Santa Barbara when he executed the deed in my presence; that we were at Monterey just before this, when the civil commotion broke out, and we hastened to Santa Barbara on our way to Los Angeles, and the deed was executed at Santa Barbara.

7th question. Where was the petition you have spoken of presented to Governor Micheltorena, and where was the deed granted?

Ans. When I first knew about this petition being presented it was in the month of October, 1844, and the deed was executed about the month of January or February, 1845.

8th question. Do you recollect how many leagues the grant was for, and where the land is situated?

Ans. I do not know the quantity of land which was granted to him. Capt. Sutter had received a grant of land called New Helvetia, which he represented as having distributed amongst his colonists. Then he petitioned for a grant for himself and his son of the overplus or "Sobrante," and which was granted to him in the title aforesaid.

9th question. Will you look at the paper marked Exhibit "C," attached to the petition in this case, and say whether from the contents of said grant, and which you drew, you believe this exhibit to be a true copy thereof?

Ans. I have examined the paper described in the above interrogatory, and I believe the same to be a true copy of the deed drawn from and executed by Micheltorena as above referred to.

JUAN CASTANADA.

Sworn to and subscribed before me this 30th day of March, 1852.
HENRY J. THORNTON, *Com'r, &c.*

Filed in office March 30th, 1852.
GEO. FISHER, *Sec'y.*

Recorded Journal, vol. 1, pages 482, 483, and 484.
GEO. FISHER, *Sec'y.*

Deposition of Manuel Jimeno.

SAN FRANCISCO, *March* 18, 1852.

On this day, before Hiland Hall, one of the commissioners for ascertaining and settling private land claims in the State of California, came Manuel Jimeno, a witness produced in behalf of the claimant, in the case of the petition of John A. Sutter, being No. 92 on the docket of the commissioners, and was duly sworn.

The U. S. law agent was duly notified, and attended.

In answer to questions put by Mr. Chitwood, counsel for the petitioner, the witness testified as follows:

My name is Manuel Jimeno; my age is 49 years, and I reside in Monterey, where I have resided for 24 years last past. I was acquainted with Micheltorena in California. He was general and governor. He was military governor of the two Californias, and civil governor of Upper California from the latter part of the year 1842 to the commencement of 1845. He held those offices for three or four months in 1845. I held the office of secretary to the governor during the whole period of his continuance in office.

A petition of John A. Sutter, in the name of son, for an extension of land, was presented to Governor Micheltorena in 1843 or 1844. The petition was presented to the governor by David Spence, of Monterey. The governor asked of me, secretary, the information of whether the petition could be granted; I replied, that there was no objection. He then stated that it was very well, and it remained to be matured on another decision. The governor was at that time thinking of visiting Sacramento, but other important military affairs required his attention to the exclusion of civil affairs, and this subject was neglected. At that time there were many petitions presented for lands in Sacramento, which the governor did not wish to grant, until after he had been to examine in person. He was prevented from going to Sacramento by political difficulty which commenced about that time.

The petition was not granted, so far as I know. There was a map attached to the petition, as I believe. In answer to inquiry made by Mr. Cooly, the law agent, the witness testified:

The governor asked information of me, as secretary, because he was accustomed to do so in all cases, and because, I suppose, he placed special confidence in me. The governor directed me to make information on these subjects, and to ask information from other authorities if I considered it necessary to do so. My position as secretary, and from the length of the time I had been in the country, and the public offices I had filled, I was supposed to be well informed on these matters.

I think I had the information that Sutter possessed the requisites to entitle him to a grant. I knew that Sutter was a naturalized citizen of Mexico. I was informed the lands were vacant, there not being even Indians there. I do not recollect where the map, which accompanied the petition, located the land.

MANUEL JIMENO.

Sworn and subscribed before me.

HILAND HALL, *Com'r*.

Filed in office M'ch 19th, 1852.

GEO. FISHER, *Sec'y*.

Recorded Journal, vol. 1, pages 398 and 399.

GEO. FISHER, *Sec'y*.

Deposition of John Bidwell.

SAN FRANCISCO, *April 8th*, 1852.

On this day, before Hiland Hall, one of the commissioners for ascertaining and settling land claims in California, came John Bidwell, a witness produced in behalf of the claimant, in the case of John A. Sutter, being No. 92 on the docket of the commissioners, and was duly sworn.

The U. S. law agent was duly notified, and attended by Mr. Greenhow.

In answer to inquiries put in behalf of the clamant, the witness testifies as follows:

My name is John Bidwell; I am thirty-two years of age, and I reside at Cluco, in the county of Butte.

I am acquainted with Capt. John A. Sutter, the claimant in this case. There was a grant of eleven leagues of land to him, previous to 1841, by Governor Alvarado, situated on the east bank of the Sacramento river, between parallel of latitude 39° 33′ 45″, and another parallel running some three or four miles south of the present site of Sacramento city, including both branches of Feather river. One of the conditions of the grant was that he was to settle twelve families upon it. I know that this condition was complied with. I frequently saw more than that number upon the land.

When I came to this country in 1841, Capt. Sutter was settled on the land at New Helvetia, where his fort was built. The fort was begun in 1841 and finished in 1843. The families above mentioned were part of them settled about the fort, and a part on the American fork, and another on Feather river, and all within the limits of his grant. I knew that Capt. Sutter in the fall of 1844 made application to Governor Micheltorena for a grant of the surplus lands included in his original map; I suppose that it was granted to him.

The grounds upon which Capt. Sutter applied for the grant of this "Sobrante," was that he had been an officer in charge of the frontier for several years, and had kept the frontier quiet, and the Government

advised of its condition for several years by sending couriers to Monterey and Los Angeles, all at his own expense, and that he had fulfilled the conditions of his first grant.

I was in the employment of Capt. Sutter from 1841 to 1846, and have no knowledge that he ever received any compensation from the Government for his services, unless by said grant of land. The Sobrante was occupied by Capt. Sutter. He had cattle and horses on all that tract between the Sacramento and Feather rivers; at one time he had over 4,000 head of cattle and 1,000 horses there. He had persons settled east of the Feather river on the Yuba river, about a league and a half from Feather river; I think this was on the Sobrante, but am not certain. He had a grist-mill on the American fork, about six miles from the Sacramento, within the limits of the original grant from Alvarado.

In answer to questions by the law agent, the witness testified as follows:

I do not know the terms on which the families settled on the land; I know that some of them had lands granted them by Capt. Sutter; I do not know whether others had such grants or not.

Capt. Sutter was a captain in the Mexican army. The families cultivated the land and put stock on it. I do not know whether that was a grant to Capt. Sutter of the Sobrante or not; I accompanied Capt. Sutter to Monterey when he applied for the Sobrante, and I remained there until after he left; he left, I think, the fore part of November, 1844; Gov. Micheltorena was in authority at that time.

JOHN BIDWELL.

Sworn and subscribed to before me.

HILAND HALL, *Com'r.*

Filed in office April 8, 1852.

GEORGE FISHER, *Sec'y.*

Recorded in Record of Ev., vol. 1, pages 56 and 57.

GEORGE FISHER, *Sec'y.*

Deposition of John J. Vioget.

OFFICE OF THE BOARD OF LAND COMMISSIONERS FOR CALIFORNIA, *San Francisco, June 4th,* 1852.

On this day, before Henry J. Thornton, one of the commissioners for ascertaining and settling private land claims in California, came John J. Vioget, a witness produced in behalf of the claimant, John A. Sutter, being case No. 92 on the docket of said commissioner, and being duly sworn, testified as follows:

The U. S. law agent being notified, declined to cross-examine.

Questions by Claimant.

1st question. What is your name, age, and residence; and how long have you resided at said place?

Ans. John J. Vioget is my name; my age is 53 years; my residence is in California, where I have resided since 1837.

2d question. Are you acquainted with Capt. John A. Sutter, the grantee in the land claimed in this case?

Ans. I am.

3d question. Are you acquainted with the settlement on tract of land claimed in this case and called New Helvetia; and if so, state what you know of its southern boundary?

Ans. The southern boundary of this tract of land commences on the Sacramento river, where Sutter's *vell* now stands; and run thence to the southern end on point of a pond or lagune; then along the east side of said pond to a row of oaks on the same side of the said pond. It runs thence to within about four hundred yards in the same course of Sinclair's house; thence turning east along the general course of the American fork of the Sacramento river for about three miles to the river, and down the American fork to the junction of Sacramento, and along the Sacramento river to the point of beginning.

4th question. Look on this map, marked Exhibit "B," filed with the petition in this case, and say whether the representation of said map agrees with the description given in your answer to interrogatory No. 3?

Ans. It is a correct representation.

5th question. Is the map now referred to, and filed with the petition in this case, and marked Exhibit "B," a correct copy of the map made by you for Capt. John A. Sutter; and if so, in which year was it made?

Ans. The general outlines are correct; there are some objects omitted and some inserted, such as houses and farms, which not in the map made by me. In relation to the southern line, the observation made of the latitude is not correct, in consequence of my inability to procure correct instruments, which I mentioned, at the time of taking the observation, to Capt. Sutter. The original map referred to was made by me in January, 1841, as I believe.

5th question. Was the original map which you have referred to as made by you, executed prior to the grant?

Ans. It was made by me prior to the grant.

JOHN J. VIOGET.

The U. S. law agent notified, and declined to cross-examine.

Sworn to and subscribed before me this 4th of June, 1852.

HENRY J. THORNTON, *Com'r.*

Filed in office June 4th, 1852.

GEO. FISHER, *Sec'y.*

Recorded in book N, vol. 1, page 556.

GEO. FISHER, *Sec'y.*

Deposition of Sam'l J. Hensley.

SAN FRANCISCO, *February 2d*, 1853.

On this day, before Com'r Henry J. Thornton, came Sam'l J. Hensley, a witness produced in behalf of the claimant, John A. Sutter,

petition No. 92, and was duly sworn, his evidence being given in English.

The U. S. law agent was present.

Questions by Claimant.

1st question. What is your name, age, and place of residence, and how long have you resided there?

Ans. My name is Sam'l J. Hensley; my age about thirty-six; my place of residence in San José, California, in which State I have lived ever since the year 1843.

2d question. Are you acquainted with John A. Sutter, the claimant in this case, and with the place called New Helvetia; if yea, state how long you have known them, and what you know of first settlement of the said place called New Helvetia, and by whom it was settled?

Ans. I am acquainted with both Sutter and the place spoken of; I have known Sutter ever since the year 1836; I arrived at New Helvetia, the place claimed, in 1843; it was a long adobe building, surrounded by a wall of adobe, of the *hith* of about fifteen feet, and width about three feet. The enclosure by this wall was area of about one hundred and eighty yards in length, and about seventy in width. There were two bastions finished on the angles of the wall, and four guns mounted on each of them. These were fenced at the time. Within this part were dwelling-houses and houses for the manufacture of various articles. There was a grist-mill, carpenter's shop, blacksmith shop, gunsmith shop, shoe shop, and a distillery of grain raised on the place. The remainder of the building, completing the fort, were erected in the winter of 1843 and the spring of 1844. There was an adobe building about two or three hundred yards from the fort, for the vaqueros, and about a mile from the fort, on the American river, there was an adobe building used for the purpose of tanning; also about three miles from the fort, on the American river, there was a house occupied by Mr. St. Clair, who was holding under the claimant, Sutter. These were all the buildings in the neighborhood of the fort.

The claimant had about five or six hundred acres of land on the place enclosed by a ditch, in which he cultivated chiefly barley, wheat and some fruit trees. The stock about the same above spoken of was about eight thousand head of cattle, and about three thousand head of horses and mares; about eight hundred head of sheep, and about four hundred head of hogs.

This stock was all on the same claim, but divided on the different settlements thereon. The number of white persons who resided on the fort, and were retained and employees of Sutter, were about twenty-five. The Indians employed by him varied from one hundred to two thousand, as the work and business on the place would require.

3d question. At the time you have spoken as your arrival at New Helvetia, viz., in 1843, what improvements were there, if any, and by whom made, at the place called "Hock Farm;" and state if you know where Hock farm is situated?

Ans. "Hock Farm" is situated on the west bank of Feather river, about sixteen miles above its junction with the Sacramento river. There was at that time a small adobe building, a corral built, and there was then under way the adobe building the claimant now resides in. Those improvements were put there by and under the direction and at the charge of Capt. Sutter, the claimant.

4th question. Was there or not any land in cultivation on "Hock Farm" at the time you speak of, and under whose charge was the place?

Ans. I am not sure that there was any in cultivation in 1843, but I am sure there was in 1844; it was in the charge of Mr. Bidwell, who superintended for Capt. Sutter.

5th question. State if you know the location of the place called New Helvetia, with reference to other places or rivers in that section of the country?

Ans. The fort of "New Helvetia" is situated about one mile from the American river, on the south side thereof, and about two miles and a half above the junction of the said river with the Sacramento river.

6th question. How long did you reside at "New Helvetia" after your arrival above mentioned, and what opportunities have you had to know its improvement, cultivation, &c., then and since?

Ans. I made New Helvetia my headquarters, and considered it my home, and was there from time to time up to the spring of 1846.

7th question. State if you know what further improvements were made, either by Capt. Sutter or by persons settled on the land by him, south of the American river, or on the west bank of the Feather river, down to the year 1846?

Ans. There was a house built by a Mr. Montgomery, a blacksmith, on the American river, south side, built about 1845. There was a building put by Sutter for the person who was to attend to his shop, at a place about three miles from fort "New Helvetia," near the Sacramento river. There was a small place improved on the south side of the American river, about half a mile from the junction of the two rivers. The improvements at Hock Farm have been gradually increasing and extending from the time I first knew the place up to this time. There was erected by Capt. Sutter at the fort, west side, a large adobe building for the use and occupation of such emigrants as came into the country before the settlement.

8th question. Do you know or not of settlements made by Capt. Sutter of families and individuals on this claim? If yea, state, as well as you can recollect, the number of such.

Ans. There must have been settled by him fifteen or twenty families on the land, prior to the year 1846.

9th question. State what effect the establishment of Sutter's fort, &c., of which you have spoken, had in regard to protecting the frontier, and that portion of the country, from the Indians, and in promoting and facilitating the emigration into the country?

Ans. The establishment of Sutter did serve to protect settlements,

and to induce them to be made; and I further believe, that but for Sutter's fort, and his forces which he could command and *contrate*, that the foreign emigrants would have all been driven out of the country. I know that Capt. Sutter always acted with great kindness to the emigrants; he gave them aid when in distress, and work to do, for which he paid them whenever they wanted it.

Questions by the U. S. Law Agent.

1st question. Do you know whether Capt. Sutter ever received any grant or title for the lands on which these improvements were made; if so, state when and by whom the title was given, and what were the limits of the tract granted?

Ans. I saw a paper, purporting to be a title from Governor Alvarado, in the possession of Capt. Sutter as to the limits of the tract. I understood from Capt. Sutter, and from Capt. Vioget, who made the survey, that it commenced at a point on the Sacramento river about four miles below the mouth of the American river, and the Yuba, a distance, I suppose, fifty miles; thence westerly to the Sacramento river, crossing the Feather river; thence down the Sacramento river to the beginning. As to the line running northerly from the American river, I have no distinct recollection of its description as given me by those parties.

2d question. Did you understand those limits as the same fixed in the title given by Gov. Alvarado?

Ans. I did not know what limits were given or fixed in the grant; what I refer to is the land as surveyed by Vioget.

3d question. Did you ever understand that this title had ever been confirmed by the supreme government of Mexico?

Ans. I do not recollect ever to have heard that it was so confirmed.

4th question. Did the families mentioned by you as settled on the land, receive any grants of land, as their property, from Capt. Sutter?

Ans. Some of them did; others did not; Mr. Grimes did; Mr. Cardua did; Nicolas Ortega did; John Smith and Allen Montgomery did also, prior to 1846. I do not recollect any other cases. Grimes told me that he preferred having a title from the governor, then from Capt. Sutter, and that he gets Sutter's relinquishment, and received a grant from both Sutter and Gov. Micheltorena.

[The claimant objects to the statement of the witness of Grimes's conversation.]

SAML. J. HENSLEY.

Sworn to and subscribed by the witness, Hensley, before me, this 2d of February, 1853.

HENRY J. THORNTON, *Com'r.*

Filed in office Feb'y 2d, 1853.

GEO. FISHER, *Sec'y.*

Recorded in N. B., vol. 2, p. 527.

GEO. FISHER, *Sec'y.*

Deposition of Fran'co Arce.

SAN FRANCISCO, *April 2d*, 1852.

On this day, before Hiland Hall, one of the commissioners for ascertaining and settling land claims in California, came Francisco Arce, a witness produced in behalf of the claimants in the case of the petition of John A. Sutter, being No. 92 on the docket of the commissioners, and was duly sworn.

The law agent was duly notified and attended.

Questions by Claimant's Counsel.

Question 1st. What is your name, age, and place of residence?

Ans. My name is Francisco Arce; my age 28 years; and my residence Santa Clara county, California.

Question 2d. What office did you fill in the government of California?

Ans. I was the first clerk in the office of the Secretary of State.

Question 3d. State what you know in regard to the grant by Governor Micheltorena to Capt. John A. Sutter, of what was called the Sobrante, (overplus,) of the grant previously made to him by Governor Alvarado for the settlement of twelve families?

Ans. During the time I acted as clerk in the secretary's office, at the request of Capt. John A. Sutter, I drew up for him a petition for the Sobrante mentioned above, which was passed to the government through all the customary steps, and was returned to the office of the secretary again, when, he believes, it was delivered to Capt. Sutter.

FRANCISCO ARCE.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office April 5th, 1852.

GEO. FISHER, *Sec'y.*

Recorded in Record Ev., vol. 1, pages 24 and 25

GEO. FISHER, *Sec'y.*

Deposition of Antonio Sunot.

SAN FRANCISCO, *January* 19, 1853.

On this day, before Commissioner Hiland Hall, came Antonio Sunot, a witness in behalf of claimant, John A. Sutter, petition No. 92, and was duly sworn, his evidence being interpreted by the secretary.

The U. S. ass't law agent was present.

In answer to questions by counsel for the claimant the witness testified as follows:

My name is Antonio Sunot, my age 55 years, and I reside in San José, and have resided there for the last thirty-five years.

I am acquainted with John A. Sutter, and have known him ever since he landed in this country at the port of San Francisco. I think it was about the year 1837, but cannot be certain in regard to the time. As soon as he landed he embarked his effects in barouches and went

up the river Sacramento, and established himself in the same place, where he afterwards had his fort, and where the city of Sacramento now is. The fort, I think, is about one thousand varas above the mouth of the American river. I was at the place about a year and a half after Capt. Sutter landed. He had several houses, and had fortified himself as well as he could against the Indians.

There were from twenty to thirty persons living there besides Indians; I mean persons in his employment; there were nine at work as mechanics, and others in farming. He had also Indians in his employ. He had considerable land in cultivation, more than two hundred acres. He had no cattle at that time.

I was at the place again in 1840. I had sold Capt. Sutter cattle, and went there for my pay. His establishment was considerably enlarged. He had tan yards on the banks of the American river, workshops within his fort, and had enlarged his ground under cultivation. I did not see all his cultivated land. The cultivated land on the banks of the river which I saw was about three miles in circumference. The fort was made of adobes, and was from four to five hundred varas square, and he had pieces of artillery there. The number of persons there had increased; he had houses outside the fort, and had some four or five hundred persons there, including Indians.

He had thirty or forty Indians who were armed and kept guard. The houses outside the fort were about it and near it. He had at this time some eight hundred or a thousand head of cattle which I had sold him.

I was there again about the end of the year 1842, or the beginning of 1843, which was the last time I was there until the year 1848.

In 1843 there were more people there, and more cultivated grounds, than in 1840. In the whole settlement there were many more people. It would be difficult to tell the number.

There were ranches established, and the people were scattered about them. I cannot say how far they were under Capt. Sutter. Emigrants came there and stayed a time and then left.

The persons settled about there were some Americans, some Frenchmen, and some of the people of the country. There was a saw-mill in the mountains, some seventy miles above the fort, carried by water-power. Between the mill and fort there was a rancho belonging to Leidsdorf, as I understood, and there were also some cultivated grounds of Capt. Sutter's in different places where the lands were most suitable for cultivation.

I think the saw-mill was on the American river. These cultivated lands were from one to two miles from the fort. Capt. Sutter was the owner of the mill, and it was called Sutter's mill. There was a grist mill near the fort belonging to him. Between the fort and the Sacramento river there were cultivated lands, and he had huts for the tools used in repairing the *bouts*. There was no house there. The houses spoken of were around the fort, within the distance of from one to two hundred varas. In 1843 there may have been about two hundred

souls in the settlement, exclusive of Indians. I cannot tell the number of Indians in his employment.

When they found a common they would flock in in large numbers; it was costly keeping them, and when the work he wanted done was completed he would discharge them. I know that there were more than twelve families settled there in 1843, permanently established. I spent two or three days with Capt. Sutter at each time I visited his place.

I was in Sacramento county in 1819, and also in 1820; there were no settlements then there; I went with about forty or fifty armed Indians belonging to the missions for the purpose of reducing the wild Indians to civilization; the wild Indians were not at open war, but were ready when occasion offered to do injury to the civilized portion of the inhabitants; they were always ready to plunder, and they made incursions into the settlements, and they were very troublesome; they were afterwards more troublesome. The settlement of Capt. Sutter had considerable effect in protecting the civilized inhabitants of California from the depredations of the wild Indians.

The Indians in the vicinity of his settlement were partially civilized by him, and were so far under his control that they would aid in defending against the wild Indians, and they consequently became less troublesome.

He sometimes made expeditions with his own people and the Indians under his control against the wild Indians. The nearest settlement to where Capt. Sutter established himself was Sonoma, about fifteen or twenty leagues distance, as I should think.

In answer to inquiries by the associate law agent the witness testified as follows:

On my first visit to Capt. Sutter, before mentioned, he told me that he had about thirty leagues in extent of land, for which he had received a title from the government of California; I do not recollect whether he said he held the land as his own property or not. Capt. Sutter had not at that time bought the Russian property at Bodega.

There were three classes of settlers at Sutter's establishment when I first visited there; there were about twenty families of Europeans and Californians, and from ten to twelve families of civilized Indians from the different missions, and there were besides a great number of transient Indian families, who came to work and then went away.

These families either lived in the fort or in the immediate vicinity. I did not learn from Capt. Sutter whether he had granted any of the land to others or not. Capt. Sutter never told me that he had recommended to the government to grant lands to the people who were settled about him in other places. I feel confident that I am correct in my estimate of the number of families about the fort.

In answer to questions by counsel for the claimant the witness testified as follows:

I have given the dates of occurrences according to my best recollection; I may have been mistaken in some of them; I am not confident

they are entirely correct. I sold the cattle to Capt. Sutter after my first visit to his place.

On the deposition being read to the witness, he says he thinks his second visit to Capt. Sutter was in 1841, instead of 1840.

ANTONIO SUNOT.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office Jan'y 19th, 1853.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 2, page 473.

GEO. FISHER, *Sec'y.*

Deposition of Gilbert A. Grant.

SAN FRANCISCO, *Feb'y* 17, 1853.

On this day, before Commissioner Hiland Hall, came Gilbert A. Grant, and was duly sworn, being a witness in behalf of the claimant, John A. Sutter, petition No. 92, his evidence being given in English.

The U. S. associate law agent was present.

In answer to inquiries by counsel for claimant the witness testified as follows:

I am acquainted with the country on the Sacramento, American and Feather rivers. On each side of the Sacramento, from the American to the Feather rivers, are strips of timber land sufficiently high not to be subject to the usual overflow of the river; these strips of land are from a quarter to a half mile in width, and are bounded in the rear by the Tular marshes. The country is of the same character on the Feather river, the timber land on the east side being generally wider than on the Sacramento. On the Sacramento, from its intersection with the Feather river, the ground is lower, and for the most part is overflown every winter. It is timber, like the lands before mentioned. The country lying on the fork between the Sacramento and Feather rivers, with the exception of the timber land on the banks of the rivers before mentioned, is subjected to annual overflow during the wet season.

GILBERT A. GRANT.

Sworn to and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office Feb'y 17th, 1853.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 2, page 585.

GEO. FISHER, *Sec'y.*

Deposition of John S. Fowler.

SAN FRANCISCO, *Feb'y 17th*, 1853.

On this day, before Commissioner Hiland Hall, came John S. Fowler, a witness in behalf of the claimant, John A. Sutter, petition No. 92, and was duly sworn, his evidence being given in English.

The U. S. associate law agent was present.

In answer to inquiries by the counsel for the claimant, the witness testified as follows:

My name is John S. Fowler, my age thirty-four years, and I reside in Sacramento city. I have lived in California six years, and since the year 1848 have resided at Sacramento. I am acquainted with Capt. John A. Sutter, and with the country lying on the Sacramento and Feather rivers. On the banks of the Sacramento, from its junction with the American to nearly the mouth of the Feather river, is high land, *formally* well timbered. The average width of the high land I should judge to be from half to three-fourths of a mile. The land *the* grows lower and becomes Tular or swamp land; the swamp land I should judge would average two and a half miles in width through the whole tract, being sometimes wider, sometimes narrower. Then there is a general but gradual rise of the land for a quarter or half a mile, when it becomes a high plain, not subject to be overflown with water. From there, with an occasional valley, the plain continues to the foot-hills of the mountains; the average distance being from fifteen to twenty miles. The high land on the banks of the river is not subject to annual overflow. The Tula land is annually overflowed by means of sloughs through the timber land, through which the waters run from the river during the wet season. On both banks of the Feather river there are strips of high timber land, and back of them Tula land. On the east side of the Sacramento river, above Feather river, there is also a strip of high land, and back of it Tula land. In general the high lands are not subject to overflow, but the Tula lands are.

In the years 1848, 1849, and as late as 1850, Capt. John A. Sutter occupied land on the east bank of the Sacramento river, between the American and Feather rivers. He had stock, consisting of horses and cattle, and Indians in charge of them. They had huts—some on the banks of the American river about a mile from its junction with the Sacramento, and others two miles or two and a half above the American, on the Sacramento.

In the summer of 1850 I had in my possession the original grant from Governor Alvarado to John A. Sutter of eleven leagues of land, and it continued in my possession upwards of a year, until the fall of 1851; it was then destroyed by fire. I was in my office in Sacramento when the office was burnt, with every thing in it; nothing was saved that was in the office, belonging to me or any one else. When the grant was in my possession, I had frequent occasions to refer to it, and I became familiar with its contents. I should think the paper marked "Titulo," being part of Exhibit "A," filed in this case, was a copy of said grant that was in my possession and burned.

When the paper came into my hands there was a map attached to it, which was destroyed with the grant. A map is now shown me, being Exhibit "B," filed in this case, and marked "H H No. 1." I think this map is a correct copy of the one destroyed; except, I think there are more dottings of trees below the American river, on the right-

hand corner on this map, than were on that. In every other respect I think it is an accurate copy. I know that the dotted lines which follow merely the courses of the rivers on this map to be in exact conformity to those on that.

The original grant and map were put in my hands by Capt. Sutter. I was acting as his agent, and had charge of the papers and documents relating to his affairs.

In answer to inquiries by the U. S. associate law agent, the witness testified as follows:

I recollect the limits of the territory expressed in the grant. It is bounded on the north by a parallel of latitude of 39 degrees and some minutes and seconds, commencing on the Sacramento river and running east on said parallel of latitude to the Feather river; thence down Feather river to its junction with the Sacramento; thence up the Sacramento to the place of beginning.

JOHN S. FOWLER.

Sworn to and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office Feb'y 17, 1853.

GEO. FISHER, *Sec'y.*

Deposition of W. E. P. Hartnell.

SAN FRANCISCO, *Feb'y 17th*, 1853.

On this day, before Commissioner Hiland Hall, came Wm. E. P. Hartnell, a witness in behalf of the claimant, John A. Sutter, petition No. 92, and was duly sworn, his evidence being given in English.

The U. S. associate law agent was present.

In answer to questions by the counsel for the claimant, the witness testified as follows:

My name is Wm. E. P. Hartnell; my age is fifty-five years, and I reside in Monterey. I have lived in California upwards of thirty years. I have known Capt John A. Sutter ever since he came to this country. I know where New Helvetia is; Capt. Sutter settled there prior to his receiving the grant. It was at the place called Sutter's fort, south of the American river, and I should think between two and three miles from the Sacramento. His settlement was considered as embraced in the tract called New Helvetia. The settlement was known by the name of New Helvetia, and also by the name of Sutter's fort. In all the papers I have seen, it was called N. Helvetia.

In answer to questions by the associate law agent, the witness says: He has seen the grant to Capt. Sutter, and made translations of it, but does not recollect the boundaries; I think one of the boundaries was called "Three Peaks." From what I can recollect of the grant, I always considered that the fort was part of New Helvetia.

In answer to inquiries on behalf of the claimant, the witness, on being shown a paper headed "Titulo," being part of Exhibit "A," filed in this case, says that he thinks the paper is a true copy of the

grant before referred to; the general wording of the grant appears to be the same.

Questions by the Associate Law Agent.

Examine the paper which you think to be a copy of the grant to Capt. Sutter, and say whether, according to its terms, you consider Sutter's fort to be embraced within the limits of the tract granted.

[The above question objected to by claimant's counsel.]

Ans. After examining the paper, it is impossible for me to decide whether, according to the tenor of the paper, the fort is included in the tract described or not.

Do you know the course of Feather river?

Ans. I do not, personally, know Feather river or its course.

WM. E. P. HARTNELL.

Sworn to and subscribed before me.

HILAND HALL, *Com'r*.

Filed in office Feb'y 17th, 1853.

GEO. FISHER, *Sec'y*.

Recorded in Ev. B., vol. 2, page 583.

GEO. FISHER, *Sec'y*.

Deposition of Franklin Bates.

SAN FRANCISCO, *Feb'y 17th*, 1853.

On this day, before Com'r Hiland Hall, came Franklin Bates, a witness in behalf of the claimant, John A. Sutter, petition No. 92, and was duly sworn, his evidence being given in English.

The U. S. associate law agent was present.

In answer to inquiries in behalf of the claimant, the witness testified as follows:

My name is Franklin Bates; my age is thirty years; and I reside at Vernon, in Sutter county. I have lived in California since the month of June, 1847. I am acquainted with John A. Sutter, and with the place called New Helvetia. I am very well acquainted with the country lying on the Sacramento and Feather rivers. I lived at Sutter's fort in 1847, 1848, and part of 1849, during which time I was familiar with that part of the country. I had a stock of horses and cattle running there, and was frequently over the land. Capt. Sutter in 1847 and 1848 had a stock of cattle and mares on the land lying on the east branch of Sacramento river, between the mouths of the American and Feather rivers, and had Indians in charge of them. The Indians had their families with them, and had huts there. The stock was on the land when I went there in 1847. The huts were on the banks of the American and Sacramento rivers. The stock came to the river for water, and ranged back in the Tules.

On the bank of the Sacramento, between the American and Feather

rivers, there is a strip of timber land about a half mile in width, and back of it are Tule and swamp lands.

The timber land is the highest. The timber land is not overflowed. In the Tule lands there is always more or less water in the wet season. The Tules are overflown by water passing through sloughs from the river. I have never seen any of the Tule lands cultivated, and I do not think they can be cultivated; it is a marsh, bearing large weeds and little grass.

The timber land produces good crops, and is fine grazing land. The Tule lands extend back to the mountains, with occasional dry barren spots intervening. From the river to the mountains the distance is about twenty miles, as I think. The intervening dry lands before mentioned are of very little use for grazing, and they are unfit for cultivation; I have tried to cultivate them, but it could not be done.

On the north side of the American fork there is not much Tule land in the vicinity of the river. On the Feather river, towards its mouth, the land is similar to that before described on the Sacramento, the Tule lands coming near the river.

After going up the river (Feather) some ten or twelve miles, the high ground becomes wider, and the Tule lands are not so near the river. On the Sacramento, above the Feather river, a similar strip of timber land to that below continues, but is wider, and back of it are Tule lands. The timber land is high land, good for grazing and cultivation. The timber land is not subject to annual overflow, but the land back of it is.

In answer to inquiries by the associate law agent, the witness testified as follows:

I am interested in lands claimed by Capt. Sutter, lying on the east bank of the Feather river, at its junction with the Sacramento river. I bought of Capt. Sutter some two miles square of land, and claim it now.

The associate law agent objects to the competency of the witness, but at the request of counsel for the claimant this deposition is certified, subject to such objection.

FRANKLIN BATES.

Sworn to and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office Feb'y 17th, 1853.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 2, p. 583.

GEO. FISHER, *Sec'y.*

Deposition of Victor Prudon.

OFFICE OF COMMISSIONERS OF CALIFORNIA LAND CLAIMS, *San Francisco, Aug.* 17, 1853.

This day, before Com'r Rob't A. Thompson, came Victor Prudon, a witness in behalf of claimant, John A. Sutter, case No. 92; after being duly sworn, deposed as follows:

Present: A. P. Crittenden, esq., att'y for the claimant, and Volney E. Howard, esq., U. S. law agent.

Questions by Claimant's Counsel.

What is your name, age, and place of residence?

Ans. My name is Victor Prudon; age forty-four years; residence, San Francisco.

Question by same. Do you know the establishment of New Helvetia?

Ans. I do.

Question by same. Where is it situated, and when was it named?

Ans. It is situated on the bank of the Sacramento river, and was founded by Capt. Sutter about the year 1839.

Question by same. Do you know of any proposition having been made at any time to Capt. Sutter by the Mexican government, or any agent of said government, for the purchase of said establishment of N. Helvetia? If so, state all you know about it.

Ans. In the year 1845 Capt. Castillano, Gen. Castro, and myself went to New Helvetia to pay a visit to Capt. Sutter, and Capt. Castullo, who had special instructions from the Mexican government, requested me to propose to Capt. Sutter one hundred thousand dollars for the establishment of New Helvetia. Capt. Sutter refused; and I was requested to offer to him the mission of San Joseph, and orders on the custom-house, the amount of which I forget, which Capt. Sutter also refused. He would not accept any proposition.

Question by same. For what purpose was the visit you spoke of made to Capt. Sutter?

Ans. For the purpose of making the above proposition of New Helvetia.

Question by same. Did Capt. Castillero and Gen. Castro at that time *occupied* any official position under the Mexican government; if so, what were they?

Ans. Gen. Castro was then the gen. commandant of the department of California, and Capt. Castillero came, as I said before, with special instructions from the government of Mexico in relation to that subject, and other matters.

Question by the same. In what capacity, and at whose request, did you accompany those gentlemen?

Ans. I was at that time lieut. colonel in Mexican army, and went at the request of Capt. Castillero as secretary, to prepare the necessary papers in case Capt. Sutter should have accepted the proposition for the sale of New Helvetia.

Cross examined by U. S. Law Agent.

From what office of the Mexican government were the instructions of Capt. Castillero of which you spoke?

Ans. From the president himself.

Do you remember the date of the instructions?

Ans. They were dated in the year 1845.

When were you first at New Helvetia?

Ans. It was, as near as I can recollect, in the year 1841; I went there with the Russian governor of Russ.

Can you describe where Sutter's fort was then situated?

At about four miles from the Sacramento river, from the landing place on said river.

What was the amount of population at New Helvetia when you first visited it in 1841?

Ans. I saw no one at that time, except the employees of Capt. Sutter and some wild Indians.

What was the population in 1845?

Ans. According to my recollection it did not exceed two hundred souls, I mean white population, excluding Indians.

How is the present town of Sacramento situated with reference to the site of New Helvetia?

Ans. It is in exactly the same place. And further this deponent saith not.

VICTOR PRUDON.

Sworn to and subscribed before [me] this 17th August, A. D. 1853.

R. AUG. THOMPSON,
U. S. Land Commissioner.

Filed in office Aug. 17th, 1853.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 3, page 55.

GEO. FISHER, *Sec'y.*

Deposition of P. B. Reading.

OFFICE OF THE BOARD OF COMMISSIONERS, *&c., &c., &c.*

This day, before Commissioner Alpheus Felch, came Parson B. Reading, a witness in behalf of claimant, John A. Sutter, case No. 92, who, after being duly sworn, deposed as follows:

Questions by Governor McDougal, Att'y for Claimant.

1st question. What are your name, age, and place of residence?

Ans. Parson B. Reading; my age is 36 years; and I reside at Shasta county, California.

2d question. Are you acquainted with John A. Sutter; and if yea, when did you become acquainted with him?

Ans. I am acquainted with him, and have known him ever since the fall of 1843.

3d question. Where did he reside?

Ans. At Sutter's fort, in the present city of Sacramento.

4th question. Do you know whether in 1843 Captain Sutter occupied and resided on his present farm, known as the Hock farm, on the west side of Feather river?

Ans. I know that he occupied it, but do not know that he resided

on it. There was on it at the time a good adobe house, house of the vaqueros, corrals, and all improvements necessary for conducting a rancho. It was also well stocked with large numbers of cattle and horses.

5th question. Was that place generally reputed at that time to be a part of Capt. Sutter's grant?

Ans. It was. It has also been occupied by him ever since; either himself or some one representing him.

6th question. Did Capt. Sutter hold any office, civil or military?

Ans. He was acting as alcalde, and also held a commission as captain in the service of Mexico, under Gov. Micheltorena. In the winter of 1844–'5 he organized a company of foreigners, principally Americans, and with them and Indians, to the number of about one hundred, he marched to join Governor Micheltorena in actual service. This was done under orders of Gov. Micheltorena. There was at that time an attempt at a revolution, and the Californians were in arms for the purpose of driving him from the country. In the expedition he was reputed to be taken a prisoner at the battle of Cohaenga. I was in command at Fort Sutter at that time, and received official notice of that fact.

PEARSON B. READING.

Mr. Greenhow, associate law agent, was present at the taking of this deposition, but declined asking any questions.

Subscribed and sworn before me at San Francisco, Oct 6th, 1853.

ALPHEUS FELCH, *Com'r.*

Filed in office October 6th, 1853.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 2, page 706.

GEO. FISHER, *Sec'y.*

Deposition of Sam'l Brannan.

OFFICE OF THE BOARD OF COMMISSIONERS, *&c., &c.*

On this day, before Thompson Campbell, Com'r, came Sam'l Brannan, a witness in behalf of claimant, John A. Sutter, case No. 92. who, after being duly sworn, deposed as follows:

My name is Samuel Brannan; I am thirty-four years of age, and I reside in the city of San Francisco.

When and where did you first become acquainted with Capt. John A. Sutter?

I became first acquainted with Capt. Sutter at his fort in the month of April, 1847, where the city of Sacramento now stands.

State what improvements he had made in character and value in that vicinity.

He had a large fort at that time, the locality of which was within the present limits of the corporation of the city of Sacramento; I should judge about fifteen to two thousand acres, as near as I could calculate, under fence and ditch, and improved, sown with wheat and barley.

He had two adobe houses built about two and a half miles to the eastward on the south side of the American river, and enclosures and corrals for the keeping of sheep and stock occupied by Indians. About two miles still to the eastward, on the south side of the American river, another adobe house was built. I should judge the value of the improvements, the fort, the buildings, the corrals, and the enclosures, to cost about one hundred and fifty thousand dollars, and at that time to be worth from seventy-five to one hundred thousand dollars.

About one mile to the northward of the fort there were two buildings immediately on the bank of the American river, and one was occupied as a tannery, and the other as a hatter's shop; and to the southward and westward of the fort there was another building, two miles and a half from the fort. This was used for the purpose of a piggery. The fort was located about two miles from the Sacramento river, and one mile south American river.

There were two other buildings on about three hundred yards from the fort, and the other about two hundred yards from it. For one of these buildings I paid, in the winter of 1848 and '49, two hundred dollars per month. In 1849 I gave him ten thousand dollars for the building and two acres of ground.

He built a mill on the American river in 1848, which was a large flouring mill, and dug a race three miles long in which he intended to take water from the American river, at, I should think, an expense of eight or ten thousand dollars. Mill and race were a total loss; the men all went to the gold mines.

Do you know any thing of improvements made on the Hock Farm, so called, situated on the western bank of the Feather river?

I heard of such a place in 1847; I visited it in 1849. There was a very fine adobe building-house; a large quantity of out-buildings; large enclosures for agricultural purposes; ranches of Indians within one hundred yards of it; grain fields, fruit trees, vegetables, &c. I should judge those improvements, from their appearance, had been there several years. The distance, I should judge, was about thirty miles from the fort to the northward, on the northwestern bank of Feather river. The work was performed by Indian labor; I think there [were] one or two white men in charge of the place.

There was stock, consisting of horses, mules, two or three hundred head of cattle, and hogs and sheep. Captain Sutter was the reputed owner of all these improvements, and exercised a general supervision over the whole business of the place.

I should judge the improvements and the stock, so far as my knowledge goes, to be worth eight or ten thousand dollars at that time. In 1847 there was one building near the fort, that I should judge contained some twelve or fifteen families, who were sojourners there while their husbands were in the war, and were supported at the expense of Capt. Sutter.

The point of the southern line as it struck the Sacramento river, as it was pointed out to me by the gentleman who made the survey for

Sutter, was at the junction of a dry slough with the Sacramento, about five or six miles south of the junction of the Sacramento and American rivers, termed and known as the Russian Embarcadero, and in 1849 surveyed and laid off into a town by Doctor Bates, and called Webster. The line, as I understood from the surveyor, run from that point in a northeast direction on the east side of a slough and low land, until it intersected the American river, about six or seven miles from the fort, *country* with what was called the Leidsdorff ranch. The direction of the line run north until it struck the Feather or Yuba river. Between the fort and Sacramento river, near the southeastern line, the land was subject to overflow.

Questions by Mr. Greenhow.

Did you in 1847 understand, all the land and houses at and about the fort to be claimed by Capt. Sutter, as belonging to himself exclusively?

The houses were built by him and his labor, previously occupied by the Indians, and at that time used by the emigrants from the United States. I understood all these lands and houses as belonging to Capt. Sutter, as no one else would take them as a gift, only for purposes. This was in 1847. Capt. Sutter offered me one mile of land adjoining the fort, on the west side, if I would settle there.

Upon what authority did you understand at that time that Captain Sutter claimed the land south of the American river, extending to the southern line described by you?

By grant from the governor of California, which grant I did not see at that time, but Capt. Sutter stated to me the circumstances under which he obtained it, which were, as I understood from him, as well as from the old citizens of California, *was* his usefulness in defending the northern frontier from the ravages of the Indians, and colonizing and chastising them; and I also understood from him, as well as from the older citizens of the country, that when the emigrants from the United States began to emigrate into the country and settle in the vicinity of the fort, that the Mexican government offered him, in exchange for his fort and grant, the mission of San José at the south end of San Francisco bay, which I have since learned through Don Pablo de la Guerra, who was an officer of the Mexican government at that time, that said proposition was made by the government of Mexico.

How many square miles do you suppose to be contained within the limits mentioned by you south of the American river?

I should judge there was from ten to twelve square miles within said limits.

Re-examined by Attorney for Claimant.

In relation to my last answer, I desire to say that I never made any particular estimate of the quantity of land within said limits, but merely stated my impression from having passed over the land.

SAMUEL BRANNAN.

Sworn to and subscribed before me this 12th day of October, A. D. 1853.

THOMPSON CAMPBELL, *Com'r.*

Filed in office Oct. 13th, 1853.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 2, page 249.

GEO. FISHER, *Sec'y.*

Deposition of P. B. Reading.

OFFICE OF THE BOARD U. S. LAND COMMISSIONERS, *&c. &c.*

This day, before Commissioner Thompson Campbell, came Pearson B. Reading, a witness in behalf of claimant, John A. Sutter, case No. 92, who, after being duly sworn, deposed as follows:

My name is Pearson B. Reading; my age is thirty-six, and I reside in Shasta county.

I recollect of riding with Capt. Sutter, about nine years since, down the banks of the Sacramento, about six miles distant from where Sacramento city now stands, to a point which he designated as being the commencement of his boundary line, a large oak which stood near the junction of a slough with the Sacramento river, just above a place called the Russian Embarcadero.

3d question. What is the character of the lands on the Sacramento and Feather rivers, embraced within the lands claimed by Capt. Sutter?

Ans. The greater portion is high, plain land, not subject to overflow. The greater portion on the banks of the river is timbered, alluvial lands, and subject to overflow. I have seen it overflowed in 1849 and in 1851. Generally all streams that overflow from the land higher upon the bank than back from the river.

Some of the persons in the employ of Capt. Sutter, in the first year of his settlement on the lands, have left him; indeed they have all left; I know of none living on the land now, who were with him at that time; I know that Capt. Sutter represented to me, in the spring of 1844, that Mexican government officers were desirous of purchasing his establishment called New Helvetia; he stated to me that a large sum of money was offered him, being in his employ and in his confidence at the time he advised with me as to the propriety of selling his property; he concluded not to sell; I saw two Mexican officers at the fort at that time; they remained there several days and made many inquiries in relation to the Sacramento valley. At the time Capt. Sutter refused selling the establishment, he urged, as one of his most prominent reasons, that the fort should serve as an asylum for American emigrants.

Questions by Mr. Greenhow.

1st question. Did you understand or consider, in 1849, that the Mexican government was anxious to get Capt. Sutter removed from the fort and the valley of Sacramento?

Ans. From the number of Americans that were constantly at the fort in the employ of Capt. Sutter, and otherwise engaged, the Californians became somewhat suspicious that the Americans were acquiring strength in the country.

2d question. Did you know of Capt. Sutter having granted, given or sold lands within the tract claimed by him, to settlers, before the American occupation?

Ans. He either leased or sold to Thomas Cardua a tract of land lying between the Feather and Yuba rivers, near or at the junction—to what extent I do not know; to Nicholas Altgur he gave lands in consideration of his settling upon them at the place now called Nicholas, on the Feather river; he also gave to Elijah Grimes a section of country on the north side of the American fork, in consideration of his settling upon it, placing stock upon it and cultivating it; he also made some other donations of land on Bear creek, in consideration of settlement near Feather river; I don't know that he ever made grants of land south of the American fork.

PEARSON B. READING.

Sworn to and subscribed before me this 12th of October, A. D. 1853.

THOMPSON CAMPBELL, *Com'r.*

Filed in office Oct. 13th, 1853.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 2, page 707.

GEO. FISHER, *Sec'y.*

Deposition of J. Vioget.

JOHN A. SUTTER
vs.
THE UNITED STATES.

OFFICE OF THE BOARD OF COMMISSIONERS, *&c., &c., &c.*

This day, before Com'r Thompson Campbell, came John J. Vioget, a witness in behalf of the claimant, who, after being duly sworn, deposed as follows:

What is your name, age, and place of residence?

My name is John J. Vioget; I am fifty-four years of age, and I live in the county of San Francisco, on the Pulgas ranch.

State if you fixed a stake or other landmark at or near the lagoon, described by you in your former deposition, as the southern boundary of the grant in this case.

Yes, I put the stake on the edge of the lagoon; from that place I went to the Sacramento river, from which point I made my starting point for the survey, and run back again to my stake, in which place I took the altitude of the sun for its latitude.

How did you survey or run said tract from such landmarks on the lagoon?

On the east side of the lagoon; then on the east side of the clump of oak trees; from these towards St. Clair's house, which was about

one hundred yards from St. Clair's house; and then I went eastward along the river, then came down the American fork to its junction with the Sacramento river, which completed as near as possible the two leagues square which Capt. Sutter wanted then. From the junction of the American fork and the Sacramento river I run up the said Sacramento river, measuring each distance of land to the junction of Feather river, then I took another observation of the sun for its latitude; I surveyed from that junction to the fort, then I began to survey on Feather river, on both sides of that river, nine leagues square, which brought me, as near as I can remember, a mile and a half above the junction of Feather and Yuba rivers. From the American fork to the ford of Feather river I traced a small margin of land all along the Sacramento river, on the east side of said Sacramento river, and on the north side of the American fork, the same to connect the two leagues square with the nine leagues on the Feather river.

What do the dotted lines on the Sacramento represent; were they made by you at the time, and on what information?

Said lines represent only the overflowed lands as far as I could see; but that part has never been surveyed by me, and was put on the chart by guess, that the river Sacramento tended to the northwest.

At the time you dotted the margin of the Sacramento river, above the mouth of Feather river, as represented on the chart made out at the time, whether the portion between the dotted lines and the Sacramento river, on the east bank, was intended by Capt. Sutter to be within the survey made?

No, it was not.

[The associate law agent objects to all the foregoing testimony, on the ground that the survey to which it relates is of lands entirely without the limits set forth in the title presented in this case.]

JOHN J. VIOGET.

Sworn and subscribed before me this 17th of October, A. D. 1853.

THOMPSON CAMPBELL, *Com'r*.

Filed in office Oct. 17th, 1853.

GEO. FISHER, *Sec'y*.

Recorded in Ev. B., vol. 3, page 259.

GEO. FISHER, *Sec'y*.

Deposition of R. B. Buchannan.

OFFICE OF THE BOARD OF COMMISSIONERS, *&c.*, *&c.*, *&c.*

This day, before Com'r Thompson Campbell, came R. B. Buchannan, a witness in behalf of claimant, John A. Sutter, case No. 92, who, after being duly sworn, deposed as follows:

What is your name, age, and place of residence?

My name is R. B. Buchannan; I am thirty-one years of age, and I reside in Marysville.

State whether you are acquainted with the character of the land on the margin of Feather and Sacramento rivers, above the junction, and also the lands lying between said margins; and if so, describe the same particularly.

From the junction of the Feather river with the Sacramento the strip of land on the east margin of the Sacramento, which is timbered and considered agricultural land, is from a half to a mile in width, and to a line opposite the Buttes, going north from the junction of the Feather river side, and on the west bank of said Feather river for the first nine or ten miles up the Feather river, the agricultural land or timber land bordering on the Tular varying from fifty yards to half a mile; near about that point the Tular turns again from that point, taking the direction of the Sacramento river.

The agricultural lands then gradually widen, taking the shape of the Tulare, following up the margin to a line opposite the Buttes; from then east to Feather river it is generally considered high ground, though a great portion of it overflows.

The land which I have described as lying between the Sacramento and Feather rivers is tulare, and is in length probably fifteen or twenty miles, and in width an average probably of from six to ten miles. The water overflows it about on an average of about five months, or six, to its utmost extent, and the greatest portion of it is covered with water during the entire year, to the depth of, say, on an average, *of* about six feet.

Questions by Associate Law Agent.

State approximately the superficial extent of the dry ground on the west bank of the Feather river, and on the east bank of the Sacramento river, between points on those rivers opposite the Buttes and the place of their junction.

If confined to the margin of these rivers, there could not be to exceed more than four *of* five leagues of dry land.

What do you suppose to be the extent of dry land fit for cultivation between the Sacramento and Feather rivers, south of a line drawn east and west through the Buttes?

There is not more agricultural land probably than what I have stated. The land, after you leave the margin of the Feather river, going over towards the Buttes, is overflown chiefly, and, when dry, is not fit for cultivation.

R. B. BUCHANNAN.

Sworn to and subscribed before me, this 17th day of October, A. D. 1853.

THOMPSON CAMPBELL, *Com'r.*

Filed in office Oct. 17th, 1853.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 3, page 257.

GEO. FISHER, *Sec'y.*

Deposition of John S. Fowler.

OFFICE OF THE BOARD OF COMMISSIONERS, *&c., &c., &c.*

This day, before Com'r Thompson Campbell, came John S. Fowler, a witness in behalf of the claimant, John A. Sutter, case No. 92, who, after being duly sworn, deposed as follows:

What is your name, age, and place of residence?

My name is John S. Fowler; I am thirty-four years of age, and I live at the city of Sacramento.

What was the establishment of New Helvetia, and the extent of its boundaries?

The establishment of New Helvetia is land belonging to Capt. Sutter, as conveyed by the Mexican government to him. The southern boundary is, I suppose, about five miles south of the American river; that is, in a direct line. The starting point, which is the southern line, is on the Sacramento river, about five miles from the junction of the American river, in a direct line.

The eastern boundary, south of the American river, I should think was from six to seven miles from the Sacramento river; then north of the American river, to the junction of the Feather river; the eastern boundary is one league from the Sacramento river; from the junction of the Feather river to the northern boundary line, I should think the average distance would be a league and a half from the Feather river; that is, the eastern boundary line.

From the northern line, on the western side of Feather river, the average distance, running south towards its junction, is about four miles; from the junction of Feather and Sacramento rivers, running northward up the Sacramento, striking the northern boundary line on the Sacramento river, the distance I should judge to be a mile in width; and that I understood to be the boundary of the land known as New Helvetia, as I have known it since 1848.

I would also state, that within the boundaries I have here described there is a considerable quantity of land which is good for nothing, particularly the land lying between the American and Feather rivers, on account of its being covered with water, and what is called Tule land.

There is a northern line of latitude passing from the Sacramento to the Feather river, striking the north arm of the northeast Butte mountain, which constitutes the northern line of said tract.

Do you know anything of the original grant of 1841, and of February 5th, 1845, the first to John Augustus Sutter, by the Mexican government, and the last to said Sutter and son? And if so, state what became of them.

I had them both, and they were destroyed in Sacramento city by fire in the month of October, 1851. The fire consumed my office and all its contents, together with said grants. On the 15th July, 1850, Capt. Sutter appointed me as his agent, at which time I received said grants, and all the papers appertaining to said grants.

Can you state whether or not the papers on file, marked "A and C" in this, are correct copies of said original grants?

My answer is, yes, they are.

What do you know of the occupation of the Sobrante grant of 1845 by Sutter and son?

I know that in 1848 Sutter was occupying the land between the Feather and Sacramento rivers, having built a very large house, and had large quantities of land enclosed and under cultivation, and he had, I should think, not less than three thousand head of cattle, and about twenty-five hundred head of horses, besides hogs, and I think about three thousand head of sheep; he had about one thousand acres under fence for cultivating purposes; I suppose that about 5,000 acres were in a state of cultivation.

Capt. Sutter had two places of residence, one at Hock Farm and the other at the fort. Ever since his family came to the country they have resided on this farm. By the *wanderings* of the river, the improvement I have spoken of is about twenty-five miles above the mouth of Feather river.

When did Nicholas Attgins settle; under whom, and what was the extent of his improvement and cultivation?

He settled on Feather river, about ten miles from the junction with Sacramento river; Sutter made him a grant for one mile, or for one league, and I can't remember which; then he built him a fine residence, and enclosed a considerable quantity of land, and had considerable quantity of stock on it, horses and cattle.

The conveyance was made, I think, in 1843; and he has occupied the premises from the time I first knew them, in 1848, down to the present time.

What is the extent of the land on the banks of the Feather and Sacramento rivers, not previously overflowed in winter?

From the junction of the American with the Sacramento river, the lands on the east side of the Sacramento river, between the Feather and American rivers—that is, good farming land, not injured by the overflows—is from half to three quarters of a mile in width. The lands from the junction of the Feather and Sacramento rivers, running up the Sacramento to the northern line, the average width of good land is, say three quarters of a mile. From the junction of the Feather and Sacramento rivers, on the west side of Feather river, the average width of good land is, say one mile on an average. From the northern boundary line on the east side of Feather river to its junction, about the same.

What is the width of the country of the immediate banks of the rivers which is periodically overflowed?

I think the average width of the land which is perfectly worthless, being Tule land, between Feather and Sacramento rivers, is from eight to ten miles in width, much after an entire lake, from twelve to fifteen feet deep in high water.

Where is the settlement of Cardua, under whom did he settle, and what is the extent of his improvements?

Sutter placed him on the land, and made a contract with him for the property; he then built him a large adobe house, and placed stock upon

it; as regards his improvements I know nothing further. I understood the contract between Sutter and Cardeca was made in the year 1844.

On which of the said grants is the Hock Farm situated, and by whom was it settled?

The Hock Farm is on the second grant, and settlement made by Sutter.

Questions by Associate Law Agent.

When did you first arrive in California?

I arrived at Sutter's fort I think on the 16th September, 1847.

By what means or authority are you enabled to state that the establishment of New Helvetia embraced the lands described by you as belonging to it?

I know it by virtue of the grants made to Sutter by Alvarado and Micheltorena. I have examined the original grants.

Were you acquainted with the Spanish language at the time you examined said grants?

Enough to enable me to ascertain the contents.

How are you able to state positively, as you did in your examination in chief, that the papers marked "A" and "C" on file in this case are correct copies of the said original grant?

From the fact of having examined them last Friday.

Re-examined by Claimant's Counsel.

In forming your opinion of the limits you have described as containing New Helvetia, what influence had any map and public reputation ever since you have known that region of country?

There was a map purporting to have been made by Vioget, which map contains all the land I have described as well as they are described in the grants, which map was destroyed at the same time my office was burnt. I regard the copy on file in this case as a correct copy. I have never heard but one sentiment expressed, and that was that the territory claimed by Sutter belonged to him—that is, the region described as New Helvetia.

Question by Associate Law Agent.

Are you in any way interested in the result of this petition?

I have no interest in the result of the claim in this case.

The associate law agent objects to all the evidence given by the witness in this deposition, except so far as it regards the natural features of the lands mentioned, and the occupation of the said lands by John A. Sutter. The remainder of the evidence respecting the extent of the establishment of New Helvetia, and the title of John A. Sutter to the same, is derived from hearsay, and therefore inadmissible, or from documents, of which copies declared by him to be correct, and now before the board, and of the meaning and bearing of which he merely presents his opinion.

JOHN S. FOWLER.

Sworn to and subscribed before me this 19th day October, A. D. 1853.

THOMPSON CAMPBELL, *Com'r*.

Filed in office Oct. 19th, 1853.

GEO. FISHER, *Sec'y*.

Recorded in Ev. B., vol. 3, p. 262.

GEO. FISHER, *Sec'y*.

Deposition of J. D. Marks.

OFFICE OF THE BOARD OF COMMISSIONERS, *&c., &c.*

This day, before Com'r Robt. A. Thompson, came J. D. Marks, a witness in behalf of claimant, John A. Sutter, case No. 92, who, after being duly sworn, deposed as follows:

Testimony in behalf of Claimant.

Present: V. E. Howard, esq., attorney for claimant; R. Greenhow, asst. law agent.

In answer to questions, witness states that his name is J. D. Marks, his age thirty-seven years; he is native of Virginia, and resides at present in city of Mexico.

Question by Claimant's Att'y.

Do you *you* anything of the approval by the supreme government of Mexico of the official acts of Governor Micheltorena while acting as governor of California? If so, state what you know.

Ans. I do not of my own knowledge. I have heard various conversations with Governor Micheltorena in August and September, 1852, in which he stated that all his official acts as governor of California had been affirmed by the supreme government. I had also conversations with Señor Romeriz, formerly minister of foreign affairs in the Mexican government, in relation to land titles in California. He stated that under the basis of Tacubaya Micheltorena had full, ample, and extraordinary powers to grant land in California.

Question by same.

State what you know in relation to the usage and custom of the governors of California to grant lands in consideration of public services, or in discharge of the pecuniary obligations of the government.

Ans. I know nothing of the usage and custom in relation to the matter. I only know that Micheltorena had general powers over the subject.

J. D. MARKS.

Sworn to and subscribed before me this 1st November, 1853.

R. AUG. THOMPSON, *Com'r*.

Filed in office Nov. 1st, 1853.

GEO. FISHER, *Sec'y*.

Recorded in Ev. B., vol. 3, p. 333.

GEO. FISHER, *Sec'y*.

Deposition of Abner Bryan.

UNITED STATES OF AMERICA,
State of California, ss.

SAN FRANCISCO, *March 22d*, 1854.

This day personally appeared before Peter Lott, a commissioner for taking testimony to be used before the U. S. land commissioners in said State, Abner Bryan, a witness in behalf of the United States, in petition No. 92 on the docket of said board, in which John A. Sutter is the claimant, and being duly sworn, deposed in English as follows:

Questions by J. H. McKune, U. S. Law Agent.

1st question. What is your name, age, and place of residence?

Ans. My name is Abner Bryan; my age 52 years; my residence Santa Clara Co., California.

2d question. Are you acquainted with the land on which the city of Sacramento stands and that vicinity; if yea, how long have you known it?

Ans. I am acquainted with it, and have been acquainted with that place since the month of November, 1845.

3d question. Do you know the place called the Three Buttes?

Ans. Yes; I am acquainted with the mountains of that name, standing by themselves out in the valley, above Hock Farm, between the Sacramento and Feather rivers.

4th question. What distance are these Buttes from Sutter's fort, at New Helvetia?

Ans. It is called about 45 or 50 miles; I think it is about that distance by a tolerable straight road.

5th question. How far would it be on a straight line running east and west, passing through the Buttes from Feather river to the Sacramento river?

Ans. About 15 or 20 miles.

6th question. How far is it from the mouth of Feather river to the Buttes?

Ans. I am not so familiar with that distance; I think it is from 12 to 15 miles.

7th question. How far is it from Sacramento river to Feather river, on a due east and west line drawn from river to river, half way between the mouth of Feather river and the Buttes?

Ans. Not less than eight nor more than twelve miles; the distance is about the same—some narrower, I think, than the distance of the line running through the Buttes; I lived in that section of the country from May to November, in 1846, and hunted through the Buttes that year.

8th question. Do you whether the country lying east of the Sacramento river, and between the mouths of the American and Feather rivers, is subject to overflow?

Ans. It is subject to periodical inundation during the rainy season; in the dry season it is not overflown; it is a flat country, with sloughs running through it.

9th question. Is the land lying between the Sacramento river and Sutter's fort, and the land on which Sacramento city stands, also subject to inundation?

Ans. It was occasionally inundated; the levee now, I suppose, keeps the water out; it was not so much subject then to inundation as it was above the American fork; the land there, I think a little higher than above the American fork.

10th question. In 1845, when you arrived at Sutter's fort, how many families had he, Capt. Sutter, permanently settled there under his protection or jurisdiction in Sacramento and Feather rivers valleys?

Ans. At Cardeca's, who then lived where Marysville now stands, there was a family living; Jack Smith lived on the east side of Yuba river and had a squaw wife; Nye lived just below Smith, east side of Yuba river; at Nicholas there was a Dutchman, who had a wife; the Dutchman came in the same year I did, and stopped there some time; afterwards went away; next below Nicholas, which is on the Feather river, just below the mouth of Bear river, was on the American fork a settlement called St. Clair's; Sinclair had a family, and in and about the fort there were a great number of families; I can enumerate the names of 13; they were all hired by Capt. Sutter to work; there were men, women, and children there, whom I did not know; many of them went away; I remember some families of my acquaintance, who left there and scattered off up the country; I knew but one family that appeared to be permanently settled there, and that was Montgomery's; the 13 families I speak of, included Gardner, Smith, Nye, Nicholas, and the Frenchman who lived at Smith's.

11th question. How many of those thirteen families came into the country in 1845?

Ans. Seven or eight.

12th question. How many of them left Capt. Sutter's claim in 1845?

Ans. Three families left in 1845; we arrived about November, 1845; some of them came in ahead of me; the others left in 1846, in April; some went to Oregon, four families; Minier went with his family up to Lassin's ranch, on Sacramento river.

13th question. Where did Sinclair live?

Ans. On the north side of the American river about two miles from the fort, on what was called Grimes's ranch, and more commonly Sinclair's ranch.

14th question. Besides those you have named, were there any other settlements on Capt. Sutter's claim?

Ans. I know of none others than those I have named at that time.

15th question. Could there have been any other permanent settlements on that claim without your having known it at that time?

Ans. It might be possible, hardly probable; I was well acquainted there.

16th question. Was there any family settled between the Sacramento and Feather rivers and the Buttes?

Ans. I think there was not, except the Hock Farm; Major Hensley

went there; I found him there in 1846, in April; there was a man there before Hensley; Capt. Sutter had him there; I think his name was MacKinley or Kinlay; he had a family; I forgot that family in my answer to the 10th question; that man stole some mules and went away.

17th question. When did Capt. Sutter go to Hock Farm to reside?

Ans. I cannot say; he had not his family in this country then, and he passed back and forth so much between the fort and Hock Farm, that I do not know when he went there to reside; I think it was after the troubles of the country in 1846.

18th question. How many sons had Capt. Sutter?

Ans. Capt. Sutter had no son in the country, to my knowledge, at that time.

Cross-examined by Mr. Howard for Claimant.

1st question. When did you leave the grant of land claimed by Capt. Sutter, and where did you go?

Ans. In the month of January, 1846, I left there and went to Leidsdorff's, ten miles up the American fork from the fort.

2d question. How many persons were there living at Sutter's fort when you arrived there in 1845?

Ans. Of white people, I suppose there were more than 100; I should say there were 20 or 30 men there who had no families. There were 13 families there that I knew, and some 8 or 10 more that I was not acquainted with.

3d question. Who was Gen'l Castro of whom you were speaking?

Ans. He was the man who was said to have the command of the Mexican troops here at that time.

4th question. What order did he give respecting the American settlers, and when did he give it?

Ans. In the latter part of November, or early in December, 1845, an order was left at Capt. Sutter's for all Americans, who were not naturalized citizens of California, to leave immediately; this order was posted on Capt. Sutter's door.

5th question. How much land had Capt. Sutter under cultivation at Hock farm, in 1845, when you arrived in the country?

Ans. I became acquainted with the Hock farm in 1846; he had as much as 100 acres in cultivation then, which had also been cultivated in 1845.

6th question. How much was in cultivation at New Helvetia, in the neighborhood of the fort, at that time?

Ans. I think 200 or 300, and possibly 400 acres; there was a great deal; I think there must have been 400 acres.

7th question. Did any of the families above the American fork, those families you have been speaking of, have lands in cultivation, and how much?

Ans. Nicholas had, I think, about 10 acres in cultivation then; Nye had some, I do not know how much; Jack Smith had some 40 or 50

acres; and Cardeca had a large farm, I cannot say how many acres. Nye and Smith had an arrangement with Sutter about their occupancy then; and, as I understood, Cardeca had also.

8th question. Was the land on the immediate banks of the Sacramento and Feather rivers higher than the back lands?

Ans. In some places it is, and in some it is not.

9th question. Where is most of the land that is fit for cultivation in Sutter's claim situated?

Ans. I should say running due east from Fremont, the bigger portion would be north of that line.

10th question. What months do you understand to be embraced in the rainy season in this country?

Ans. Generally December, January, and February.

11th question. To what extent is *is* the extent of country, from the fort to the Buttes, overflowed in the rainy season generally?

Ans. There is a good scope of it overflown there every year, both on the banks of the rivers and back from the river. I should say in the country between Nicholas and American fork, one half of the country is overflowed in the wet season, in ordinary years.

12th question. How much is overflowed between the Sacramento and Feather rivers, among the Tulares?

Ans. A strip from half to a mile wide is generally overflowed in the rainy season; the land below, between the two rivers, is sometimes dry and sometimes all overflowed; I mean between the Feather and Sacramento rivers.

Re-examined by Law Agent.

1st question. Of the hundred white persons you speak of as being at the fort in 1845, how many came there in 1845?

Ans. The greater portion of them came there in that year.

2d question. How many of them were there as late as July, 1846?

Ans. Some six or eight families remained at the fort in 1846; it was during the war. The men went out that year with Fremont and others to fight, and began to return in the fall of the year; there was some 4 or 5 families that did not go into the fort; the families in the fort went there for protection.

ABNER BRYAN.

Subscribed and sworn to before me, March 22d, 1854.

PETER LOTT,
Commissioner for taking Testimony, &c., &c.

Filed in office March 22d, 1854.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 4, p. 92.

GEO. FISHER, *Sec'y.*

Deposition of H. E. Robinson.

UNITED STATES OF AMERICA,
State of California, ss.

SAN FRANCISCO, *March 22d*, 1854.

This day personally came before Peter Lott, esq., a commissioner for taking testimony to be used before the board of U. S. land commissioners of said State, Henry E. Robinson, a witness on behalf of the United States, in case No. 92 on the docket of said board, in which John A. Sutter is claimant, and the said Henry E. Robinson being duly sworn, deposed in English as follows, to wit:

Volney E. Howard, esq., attorney for claimant, is present.

Questions by U. S. Law Agent.

1st question. What is your name, age, and place of residence?

Ans. My name is Henry E. Robinson; my age 40 years; my present residence at Sacramento city, California.

2d question. Are you acquainted with John A. Sutter; if yea, how many years have you known him?

Ans. I am; I have known him since about the latter part of 1849, or early in 1850.

3d question. Do you know, from conversation with him, or from any other source, when his family came to California?

Ans. I have had no conversation with him on that subject, and do not know when his family came to this country.

4th question. You were directed to bring here with you a certain deed from said John A. Sutter to yourself and others. Have you the deed with you or in your possession?

Ans. I have not the deed in my possession; it was destroyed by fire, to the best of my knowledge and belief.

5th question. What is your judgment of the distance from Sacramento city to the Three Buttes?

Ans. I have no means of knowing the distance; the distance I do not know.

Cross-examined by V. E. Howard, Esq., Counsel for the Claimant.

1st question. Have you been up and down the banks of the Sacramento and Feather rivers?

Ans. I have, often.

2d question. How wide is the strip of land, on an average, on the banks of those rivers not periodically overflowed in the winter?

Ans. The width is very narrow, as far as I have been able to observe; perhaps about one mile on each side.

3d question. What is the character of the land back of this strip, from the river generally?

Ans. On Feather river, as you descend the river, the land rises as you go back from the river on the lower Sacramento; the land back from the river is lower and swampy; opposite of Sacramento there is a large

marsh called the Tule swamp, some six or eight miles in width; on the west bank of Feather river there is a comparatively elevated piece of land; there is also a very narrow strip of land higher than the neighboring lands. On the east bank of the Sacramento, above the mouth of Feather river—I mean by this, that in the tongue of lands between the two rivers—there is a narrow strip bordering on each river higher than the intermediate lands, which are nearly all swampy or Tula lands, as far up as the Butte mountains, or in that neighborhood. These low lands are subject to inundation. The character of the land on the Sacramento river, between Sacramento city and the mouth of Feather river, is much like those I have mentioned; there is a narrow strip of land, from half to three-quarters of a mile, on the east side of the banks of the river—timbered land, not periodically overflown in the winter. Back of that, for about two miles, there is a lagoon and Tula lands; there the land rises as it runs back to the mountains.

4th question. How much of this strip of land down the Sacramento and Feather rivers is susceptible of being used for agriculture in years of ordinary freshet?

Ans. None, except the high lands to which I have already referred.

5th question. Are you acquainted with the boundaries of Sutter's (fort) grant, below the American fork?

Ans. No; I don't know anything of the boundaries.

6th question. Can you state the average width of Sutter grant below the American river, and back from the Sacramento river?

Ans. Only from the map which I have seen; and I do not recollect distinctly the map, though I have examined it. I think, from the map I examined, the southern boundary was fixed a few miles south of Suttersville; it runs out in an easterly direction, and the northeasterly to the grant of Leidsdorff. I cannot say as to the width, for I do not know the distance.

Re-examined by U. S. Law Agent.

1st question. Is there any part of this land above the mouth of the American and bordering on the Sacramento and Feather rivers which is not subject of overflow by the influx and currents of the rivers during the rainy season? If yea, state what portion.

Ans. There are portions of the land not subject to overflow, to the best of my knowledge and belief; the latter branch of the question I cannot answer as to the quantity.

2d question. What do you mean by periodical overflow of these lands?

Ans. I mean annual inundation in the winter from the melting of the snows, and rains.

3d question. Are they not frequently inundated from these causes?

Ans. Portions of them are from extraordinary high floods, but what portions I can't state. The strip of land bordering on the east bank of Sacramento river, between the mouth of Feather river and Sacramento city, I have seen chiefly all overflowed in extraordinary high freshets.

HENRY E. ROBINSON.

Subscribed and sworn to before me on the 30th March, A. D. 1854.

PETER LOTT,
Commissioner for taking Testimony, &c., &c., &c.

Filed in office March 30th, 1854.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 4, page 127.

GEO. FISHER, *Sec'y.*

Deposition of John Bidwell.

UNITED STATES OF AMERICA,
State of California, ss.

SAN FRANCISCO, *May* 9, 1854.

This day personally came before Peter Lott, a commissioner for taking testimony to be used before the board of the U. S. land commissioners in said State, John Bidwell, a witness on behalf of claimant, in case No. 92 on the docket of said board, wherein John A. Sutter is claimant, and said witness being duly sworn, on oath deposed in the English language as follows, to wit:

The U. S. law agent is present.

Questions by Attorney for Claimant.

1st question. What is your name, age, and place of residence?

Ans. My name is John Bidwell; my age 34 years, and my residence Butte county, California.

2d question. How long have you resided in California, and where during the first years of your residence here?

Ans. I have lived in California since 1841, the first 14 months at Bodega, north of this on the coast; after that at Sacramento, and in the valley most of the time till 1846. The point where Sacramento now is was then called New Helvetia.

3d question. Can you state how many families were settled there under Capt. Sutter, and about what time they were so settled?

Ans. In 1841, when I arrived there, John Sinclair was settled there on the south side of the American fork, with his family. Another man, named Makaina, was settled between the fort and the Sacramento river. James Bruchum lived at the Sheep ranch at the lagoon, with his family, about two miles below Sacramento; another man, named Leinhard, was settled and cultivating a tract between the fort and the mouth of the American river; Allen Montgomery lived with a family on the south side of the American fork; Perry Macoon and his family also; Henry Bee and wife, Flinglan and wife, (a blacksmith,) John Chamberlain and wife, William Daylor and wife; Black, a hatter; Atkinson, a hatter; and the Kanakers with their wives, Harry Footooi, and Jun: all these persons were settled in and about Sutter's settlement between the years 1841 and 1845. Sinclair, Makama, Ber, Brseheim, Fling, Chamberlain, Daylor, and the three Kanakers, were

all there in 1841, and Perry Macoon and G. F. Wyman also. I was not at the fort in 1842, and in 1843 I was not much there; I was living that year at the Hock Farm. In 1844 and 1845 the persons I have named were most of them remaining there, except occasionally absent of some who might have been moving about. There were a good many others living at the fort, but these were mere transient; it was a general rendezvous and headquarters of travellers and new comers, also of trappers. I recollect a trapper named M. Nicau who was there in 1841, and made it his home.

In 1841, in addition to those I have named, I should say there were as many as 20 or 25 single men living at New Helvetia.

4th question. About how many men were there living at New Helvetia in 1844; previous to June of that year, how many people altogether?

Ans. I should say not less than 30 or 40 men, and the entire population could hardly have [been] less than 50 or 60 persons, though I cannot state accurately.

5th question. What was the population in 1845 and 1846?

Ans. They were not less than in 1844, but during the summer of 1845 a large party left the fort on a trapping expedition to the mountains; they returned in the fall to New Helvetia.

6th question. State if you remember any other persons settled under Sutter on this grant, within the years before mentioned.

Ans. On Feather and Bear river and Yuba river, Nicholas Altgun, Theodore Candece, and N. C. Nye, were settled in 1843, the last from 1843 to 1846; Jack Smith and G. Patterson in 1845; also Theodore Sicara, E. Dupont, J. Vevo, Pablo Gutiernez. James Smith had lived at Bear and Feather rivers, but resided at New Helvetia. I forgot to mention a man by the name of Bartlett, who lived at the fort in 1841.

There were other persons, more transient, who lived there; I remember one man, named Cortau, and one Baptisto Ruello, and a German named Henry; I do not remember his full name. One Charlie Pufushauser lived there till 1843. These are all I at this moment recollect; I am aware I must have forgotten some names.

7th question. What was the treatment of Capt. Sutter towards the Indians in his neighborhood?

Ans. He employed many of them to work for him, and always paid them well and treated them very kindly. He employed them also in various trades; his treatment was uniformly kind towards them.

8th question. What was the effect of the establishment of the fort and settlement of New Helvetia by Capt. Sutter, in preventing Indian depredations and protecting the frontier?

Ans. The effect of his settling there was the subjugation of large bands of Indians, and the rendering them peaceable and friendly, who had previous to that time been hostile and very troublesome to the Spaniards; and, indeed, his fort and influence was the only protection the country had on the northern frontier against the incursions of the Indians.

9th question. How many civilized and christianized Indian families were settled at New Helvetia under Captain Sutter in 1841, and from that on to 1846?

Ans. In 1841 I should think not less than 20 or 30, and that number from time to time increased. These are exclusive of the former settlers I have named in this deposition.

10th question. Did you know any natural boundaries as the northern and southern limits of Sutter's grant?

Ans. The southern line of Sutter's land then was understood to be a line running east and west through the lagoon, or a little south of the *of the* lagune, about 3 or 4 miles south of where Sacramento now is. The northern limit was a line running east and west, so as to include the Three Buttes, as I understood it.

Cross-examined by U. S. Law Agent.

1st question. What amount of land do you understand to be included in the Sutter grant, between the limits you have named and according to the map now shown you, marked "B," and filed in this case?

Ans. The length of it must be, in a direct line, not far from 40 miles, from the top of the Buttes to the southern line I have named. Capt. Sutter did not claim all the land embraced in the map.

It used to be called 20 miles from the fort to the mouth of Feather river by the road we travelled, and some 30 miles from there to the Buttes—but that was not a direct course. I think the average width of the country embraced in this map may be 15 miles. Capt. Sutter did not claim all the land embraced in this map.

2d question. How much country is embraced in width within the outside edges of the paper on which the map is made, measuring between the black lines at the edges of said paper?

Ans. I should think it would be nearly 40 miles; but the Sierra Nevada should come within the limits of this map at the upper part of the map, not at the lower part.

3d question. What is the eastern limit of Capt. Sutter's claim?

Ans. I always understood him to claim within three leagues east of the Feather river. I do not know that he claimed all up to that distance; but to the best of my knowledge he never claimed beyond that distance.

4th question. State if you know what and how that limit was established?

Ans. There was a certain tree marked on the south line (or side) of the American fork, about three leagues east of the Sacramento river, which I saw; that is the only mark I ever saw, as a landmark, on that boundary. I am quite certain that Mr. Sinclair pointed out that tree to me, and informed me that Capt. Vioget, who made the survey for Capt. Sutter, marked it as a boundary landmark. That is all I know about the establishment of that boundary. The land west of that point was occupied by and always recognised as belonging to Capt. Sutter.

5th question. What was the boundary on the east of Capt. Sutter's land, north of the American fork?

Ans. The only point I have ever known as marking the boundary north of the American fork was the mouth of a creek which emptied into Bear river—a small creek, which was dry in summer—that was the recognised limit of Capt. Sutter's claim in that direction; between that and the American fork was a desert waste, on which I never knew of any landmarks being established, or any natural objects existing which were noticed as such.

6th question. If a direct line be drawn from the mouth of the creek you have named Bear river to the marked tree named on the American fork, how much land will be embraced between that line and the Sacramento and Feather rivers, with the Bear river and the American fork for the other boundary?

Ans. I should think 200 sections at least; all of which is overflown in winter, and is desert and waste lands, nearly all of it. It would embrace nearly all the Rancho del Passo.

7th question. What establishments had Capt. Sutter on the Pacific coast in 1840 and 1841?

Ans. He purchased the Russian settlements there about the time I came to the country, in 1841. I went there to take charge of the property, and assist in moving it to Sacramento; all that Capt. Sutter required was removed then to New Helvetia. I knew nothing about his title to the land on the coast, but understood that he had purchased all the rights which the Russians had there.

8th question. How many sons had Capt. Sutter; when did they come to California; and how old were they respectively when they came?

Ans. I have seen three of his sons. The oldest came to California, I think, in the fall of 1848, and was 21 years of age, I believe, when he arrived; the others arrived afterwards, I think within a year; their ages I do not know, only that they were younger than the first named.

9th question. Have you ever seen the grant under which Capt. Sutter claimed to own his land? If yea, state what was named therein as the eastern boundary of the grant.

Ans. I am not positive that I have ever seen his original title, though I think I have; I do not remember what were named as the boundaries. I think I recollect the "margins of Feather and Sacramento rivers" as being words used denoting the locality of the land.

10th question. Do you know where Sinclair's house was in 1841, and how far from the mouth of the American fork?

Ans. I think it was between four and five miles, on a straight line from the mouth of the American fork.

11th question. What time did Sinclair settle there; how long did he remain; what was the character of his settlement, and how do you know he settled under John A. Sutter, and state your means of knowledge.

Ans. All that I know as to the time of his settlement is that he had

a house, and was living there in 1841, when I arrived in the country. I saw him there again in 1843, and he remained there till 1844, when he removed to the other side of the river. I know nothing of the terms of his settlement with Capt. Sutter, or under him. I do not know what the bargain was; I do not know that there was any bargain made between them. I have always heard Capt. Sutter speak of Sinclair as one of his settlers.

(The last statement of the witness objected to by law agent as hearsay testimony.)

12th question. Answer the same questions concerning each of the following named persons: Makaina, James Bruheim, Leonhard, Allen Montgomery, Perry McCoon, Henry Bee, Fling, John Chamberlain, William Daylor, Black, Atkinson, the three Kanakas, Nicholas Altgein, Theodore Cordua, W. C. Nye, Jack Smith, G. Patterson, Theodore Sicard, E. Dupont, J. Vevo, Pablo Gutiernes, Bartlett, Babtiste Ruello, Harry (a German), and Charlie Perfinhousen.

Ans. Makaina lived between the fort and the river; cultivated a piece of land there, and I think staid there till he died, in 1845. Leenhart went there and occupied the same ground after Makaina died. So far as Makaina and Leenhart were concerned, I do not know anything of their bargains with Capt. Sutter. It was a matter of general understanding at the time that they were settled under Capt. Sutter, but upon what terms I never understood.

James Brunheim was on Feather river in 1841, and I think remained there till the war broke out—that is, remained on Sutter's grant; he went south to the neighborhood of the Laguna about 1843. I do not know what his terms with Sutter were. He was taking care of hogs for a share, I think.

Allen Montgomery came in 1844, and settled there in 1845. Capt. Sutter gave him a piece of land on the American fork. I think he remained there till 1847, or 1848. Perry McCoon came when Montgomery died, and left, I think, in 1847. Capt. Sutter let him and Wyman have a piece of land which, I think, they shared between them.

Harry Bee was living at the fort in 1841; I do not remember when he went away. He lived in the fort with his family. I do not know of his having any land assigned to him.

Fling, Chamberlain, and Daylor were all on the same terms, living at the fort. I do not remember when Fling went away. Chamberlain went away in 1846, I think; Daylor went on to his ranch in 1844, I think. These last three lived under Sutter at the fort. I do not know of their having land assigned to them.

Black and Atkinson were hatters, and had a house on the south side of the American fork. I do not know their terms of settlement. There were some lots laid out on the American fork like town lots, and I think Beach and Atkinson claimed the lots on which they lived; nearly all these selected some of these lots; I selected one myself. I considered myself a settler there for a long time, and we expected Capt. Sutter to give us lots.

The three Kanakas were, in 1841, all there; they staid there. Tootooi died there. Jim left about 1845 or 1846, I am not certain, and Harry staid as long as Capt. Sutter did.

Nicholas Algier lived on Feather river. I first saw him there in 1843; he has lived there ever since. Capt. Sutter gave him a piece of land there; I made the papers myself. The Kanakas were under Sutter; whether they had any particular land assigned to them, they cultivated their gardens.

Cordua went there in 1842, and settled where Marysville now is; he staid there, I think, till 1849; he was under Sutter; he often told me so; he cultivated extensively. Chas. W. Flagg, a man I forgot in my former answer, came and was partner of Cordua, with the permission of Capt. Sutter. M. C. Nye was there in 1843; Sutter assigned him a piece of land on the south side of Yuba river in 1845; I believe he also held a piece on the east side of Feather river, not far from Hock Farm; he staid till about 1849 or '50. Jack Smith and George Patterson settled together in 1845; they staid till 1847; they settled under Sutter. I do not remember whether Sutter gave the land to both, or only one of them; they had several hundred head of cattle and cultivated land.

Sicard and Dupont settled, I think, in 1842; I saw them there in 1843, on the west bank of Feather river, just below the Hock Farm; they were getting out lumber, most of them; I do not know of what terms they were settled; they went away, I think, in 1844 to the fort, and staid there till 1845; Sutter bought the timber of them as they got it out.

Vero settled in 1845 on Bear river; I believe Capt. Sutter gave him land on Bear river; I am not certain. He lived a good deal at the fort, and was under Sutter; I believe he went away in the fall of 1845, possibly in 1846. Pablo Gutierez I saw first in 1843; he was on the Feather river, west bank, about three miles from Hock Farm; he staid there till the spring of 1844; when I saw him he was breaking colts for Capt. Sutter; he had a temporary house, such as were usually built by the Spanish, for summer; he had a wife; he was killed while in Capt. Sutter's service in 1844; he moved, and made a small house on a piece of land adjoining Capt. Sutter on Bear river; he made application for a grant to himself; he staid there but a short time, and he was called by Capt. Sutter to take an express below, and on that errand he was killed.

James Smith was with Capt. Sutter when I came in 1841; he was most of the time at the fort; Capt. Sutter gave him land in 1845 on Feather river; he remained there till 1847 or 1848.

Bartlett was there in 1841, and was drowned in 1843; he was sailing Capt. Sutter's launch mostly, and made his home at the fort; I do not know that he ever had any land assigned to him.

Rulle came in 1843; I think he left in 1845 or 1846; he first lived at the fort; afterwards on Feather river; I do not know whether any lands were assigned to him by Capt. Sutter or not; I do not know upon

what terms he lived upon Feather river; when at the fort he was working, and helping a harvesting.

Henry, (the German,) and Chas. Perfenhausen, lived with Cordeca where Marysville now is; I saw Perfenhausen in 1843; I think he was with Sutter from 1841 till that time; Henry came in 1844; I think he left in the spring of 1846 or 1847. Perfenhausen went to Oregon in 1843; I don't know upon what terms they were settled. I remember another man named Brown, who lived at the fort in 1841 when I came; he died there in the winter of 1844 and 1845 at the fort; I was absent when he died; he lived there; I don't think he had any land assigned to him; his business was to take care of all the fences; he was in Sutter's employment in 1841; after that, I do not know whether he was or not; I do not know the terms under which he lived there.

13th question. In what capacity did the persons mentioned in your answer to questions 4 and 5 reside at New Helvetia, such as you do not name?

Ans. They were chiefly persons who were working there at various kinds of trades and employments under Capt. Sutter; some were coming and going; others made it their home, but not so permanently as those I have named as settlers there.

Re-examined by Claimant's Attorney.

1st question. Where was the tillable land within Sutter's grant situated?

Ans. On the south bank of the American fork, embracing a bottom of about two miles in extent, I think, and both banks of the Feather river generally, in a very narrow strip along the banks; most of the places but a few rods in width of the dry land on Feather river, and also on Yuba river; the bottoms there, though in high water, were badly overflowed; $\frac{3}{4}$ of a mile on each side of the river was good tillable land, but badly overflowed in winter. There is, I think, a couple of miles on the north side of the American fork, in del Passo, of good tillable land, and I should think two miles on the south side of Bear river.

2d question. What is the character of the rest of the land in Sutter's grant as to being swampy and overflowed?

Ans. Most of the remainder besides what I have mentioned is what is called overflowed lands, subject to periodical inundation, and unfit for cultivation, except some portions which are dry, but barren and unfit for use.

Cross-examined again by U. S. Law Agent.

1st question. From a point on the Sacramento river, 6 miles south of the American fork, to a point on the Feather river, at the mouth of the Yuba, is not the scope of the country extending east from the Sacramento and Feather rivers, one mile to a line running parallel with the rivers, subject to overflow?

Ans. No, it is not quite all subject to overflow; and in case of the bluffs at Suttersville, and a small strip along the bank of Feather river

below Nicholas, and about one-half or two-thirds of the bank above Nicholas, back of the narrow strips I have named, and within the scope I have named, I should think one-half of the whole of the land above Nicholas and the mouth of the Yuba river is not overflown.

JOHN BIDWELL.

Subscribed and sworn to before me this 9th day of May, 1854.

PETER LOTT,
Commissioner for taken Testimony, &c., &c., &c.

Filed in office May 9th, 1854.

GEO. FISHER, *Secretary*.

Recorded in Ev. B., vol. 4, page 378.

GEO. FISHER, *Sec'y*.

Deposition of Sam'l Kyburz.

UNITED STATES LAND COMMISSIONER'S OFFICE,
San Francisco, June 24, 1854.

On this day, before Com'r Alpheus Felch, came Sam'l Kyburz, a witness in behalf of the claimant, John A. Sutter, case No. 92, who, after being duly sworn, deposed as follows:

Questions by Mr. Howard, Att'y for Claimant.

1st question. Please state your name, age, and place of residence.

Ans. My name is Sam'l Kyburz; my age 44 years; and I reside at Sacramento city, California.

2d question. Are you acquainted with the rancho called New Helvetia, claimed by John A. Sutter in this case; if yea, how long have you known it?

Ans. I have been acquainted with the rancho since October, 1846.

3d question. How many families were settled on the land in October, 1846; what were their names, and under whom did they settle?

Ans. There were twenty-one families who were settled on the rancho before 1846, or *who* when I arrived in October, 1846. They were some nineteen families who moved on between the time when I arrived and the first of January, 1847. The persons who lived on the lands when I arrived in October, 1846, were Nicholas Allgur, John Hinckley, Montgomery, McDowell, Lehigh, James Smith, John Smith, Cardua, Harry McCoon, Cadel, Nye, Kaser, Maintap, Grayson, Joseph Vevo, Cigard, Gondrow, and a man whom they called Harry, and an old Spaniard, whose name I do not know. Thirteen of the above named persons owned land; all who were named above were men of families, and all had their families there with them.

4th question. How many of the settlers above named received lands of said Sutter?

Ans. Thirteen of them that I know.

5th question. State the names of any families that settled on said rancho after you came there in 1846.

Ans. Mr. Burnnet, Mr. Sturzenagger, Mr. Qucy, Mr. Lenox, Mr. Hatter, Mr. Glover, Mr. Montril, Mr. Howell, Mr. Kesebug, McKinchew, McCracken, Dr. McKencken, Mr. Weemer, Curtis, McDaniels, Zeuys, and myself. There was also another, who was the son-in-law of Mr. Howell, whose name I do not remember. These all moved on after I went there and previous to January, 1845.

6th question. Do you know whether any of these received land from said Sutter?

Ans. I do; five of them did, to my knowledge.

7th question. How much land is there not so overflown and rendered swampy as to be unfit for cultivation within the claim of Sutter, as represented on the map in this case, between the lake or lagoon below Sacramento, the Buttes or two Peaks, the margins of Feather and Sacramento rivers?

Ans. I think there is not over twenty-eight leagues of the land which is fit for cultivation.

8th question. How much land is there within said limits which is not overflown by the swelling or impulse of the current of the rivers?

Ans. I do not think there is over eight or ten square leagues of it that does not oveflow.

9th question. At what season of the year does it overflow, and how is it caused?

Ans. It overflows from December to the middle of April, and sometimes the first of May. It is caused by the heavy snows in the mountains, and heavy rains. It overflows as often as every third year.

10th question. How much land is there within the grant as represented on the map, above the regular periodical overflow of each winter?

Ans. I should think there were some twenty-eight square leagues that does not overflow every winter; think it is from twenty-five to twenty leagues.

11th question. What have been your means of knowledge of the character of this country?

Ans. I have been overseer there for Capt. Sutter, and my business has been out over the rancho from October, 1846, to May, 1848, and again from January, 1851, to May, 1852; I have been often over the land.

Questions by Mr. McKune, Law Agent.

1st question. Were any of those settlers whom you have mentioned settled within the following description: eleven square leagues of land, bounded on the north by the summits sometimes called the Three Buttes, on the east by the borders of Feather river, on the south by the Feather and Sacramento rivers, and on the west by the river Sacramento? If yea, which of them?

Answer. There were none of them within those limits, except Harry, who lived at the place called Hock Farm, which is now Capt. Sutter's residence.

2d question. Was the land in and about the city of Sacramento subject to overflow by the floods?

Ans. It was.

3d question. How was it on the immediate borders of the Sacramento and Feather rivers, above Sacramento city?

Ans. It was likewise subject to overflow in the high stage of water.

Questions by Mr. Howard.

1st question. Where were the families residing whom you found there in 1846?

Ans. They resided between the northern line of the grant as laid down on the map filed in the case, or the Buttes, and the southern line as there laid down on the Laguna; most of them also lived between the American and Sacramento rivers.

2d question. What is the average width of the land which is usually cultivated along the banks of the Sacramento and Feather rivers?

Ans. From forty rods to ten or twelve miles.

SAMUEL KYBURZ.

Subscribed and sworn to before me, this 24th day of June, 1854.

ALPHEUS FELCH,
Commissioner.

Filed in office June 24th, 1854.

GEO. FISHER, *Sec'y*.

Recorded in Ev. B., vol. 4, p. 652.

GEO. FISHER, *Sec'y*.

Deposition of John A. Sutter.

DISTRICT COURT OF YUBA COUNTY, *ss*.
April Term, A. D. 1852.

CHARLES COVILLDEED et al. ads. STEPHEN J. FIELD.

John A. Sutter, being duly sworn, deposes and says: I reside at Hock Farm, in Sutter county. I am acquainted with the parties in this case. I was at one time the owner of this ranch about Marysville and vicinity. I held it by grant of the government of Mexico. That grant was in writing. The original grant is lost; it is recorded in Sacramento city, and is also in the archives of Monterey. I claim this grant of the Mexican government. I recollect the year in which I first went into the occupancy under the Mexican grant. I leased this ranch to Cordway, I think it was in 1843. Corderay resided here as my *as my* tenant from 1843 to 1858. Corderez put up adobe houses, and had a large field ditched and enclosed within the present limits of the city of Marysville. This claim was respected as my property by the people, according to the customs of the country. Nye, Foster and Covilland purchased the lease of Corderay, and afterwards purchased my interest. The deeds were executed.

Cross-examined.

I claimed this ranch from both grants. I was present at the execution of the deed dated July 8th, 1850, from Anna Eliza Sutter, Emil V. Sutter, and William Alphons Sutter, to Henry E. Robinson, John J. Foster, Eugene F. Gillispie, and John McDougall, witnessed by Wm. W. Warren and G. W. Laurence, as appears in the Deed Book No. 3, pages 250, 251, and 252, in the recorder's office of the county of Yuba. The recitals in said deed are correct; said deed made in the name of the children, and for the benefit of myself and children. I have four children, the oldest having no benefit of this; one of them is 16 years old, another 24, another between 22 and 23, and the other about 20 years old; my oldest child arrived in this country in 1848, and the others arrived two years ago last February, 1850; they arrived from Switzerland; they are natives of Switzerland. The second grant was not confirmed by the departmental assembly of the government of California. The city of Marysville was embraced in my grant.

JOHN A. SUTTER.

Subscribed and sworn to before me this 17th day of April, A. D. 1852.

[SEAL.] M. V. B. DANLY,
Notary Public, Yuba County.

STATE OF CALIFORNIA,
County of Yuba, ss.

I hereby certify the above to be a correct copy of the deposition of John A. Sutter in the above cause, now on file in my office.

In witness whereof, I have hereto set my hand, and affixed the seal of the court, this 17th day April, A. D. 1852.

[SEAL.] CHARLES LENDLEY, *Clerk,*
By M. V. B. DANLY, *Deputy.*

Filed in office July 18, 1854.

GEO. FISHER, *Sec'y.*

Deposition of Joseph Clough.

UNITED STATES LAND COMMISSION,
San Francisco, July 18, 1854.

On this day, before the commissioners sitting as a board, came Joseph Clough, a witness in behalf of the claimant, John A. Sutter, in case No. 92, who, after being duly sworn, deposed as follows:

Questions by Counsel for Claimant.

1st question. State what you know in relation to the recording of the Spanish document now shown you.

Ans. About April, 1851, I was employed by the recorder of Sacramento county to copy into his books the original grant from the Mexi-

can government to Capt. Sutter of eleven leagues of land. This paper is a copy of that original grant, with the exception of a few quite unimportant variations in the orthography of a few words.

2d question. Will you state whether at that time you were acquainted with the signatures of Alvarado and Jimeno, and your means of knowledge?

Ans. I was, having seen them several times attached to grants of land.

3d question. What was your opinion of the genuineness of those signatures attached to the document which you copied?

Ans. I had no doubt of the genuineness; the paper bore every mark of originality.

4th question. What became of that document?

Ans. I have every reason to believe that it was burned with Col. Zabriskie's office in the fall of 1851, in Sacramento city.

Cross-examined by U. S. Law Agent.

Did you ever see Gov. Alvarado or Jimeno write?

Ans. I never did.

2d cross-int. What are those marks of originality spoken of in your answer to the 3d question?

Ans. The shape and quality of the paper, the two government stamps thereon, one for the years 1839 and 1840, and the provisional one for 1841 and 1842, the different handwritings in the instrument, the peculiarity of the writing, and different inks.

JOSEPH CLOUGH.

Subscribed and sworn to before the commissioners sitting as a board this 18th July, 1854.

GEO. FISHER, *Sec'y*.

Filed in office July 18th, 1854.

GEO. FISHER, *Sec'y*.

Recorded in Ev. B., vol. 5, p. 177.

GEO. FISHER, *Sec'y*.

Deposition of Jacob P. Leese.

UNITED STATES LAND COMMISSION,
San Francisco, July 18th, 1854.

On this day, before the commissioners sitting as a board, came Jacob P. Leese, a witness in behalf of the claimant, John A. Sutter, in case No. 92, who, after being duly sworn, deposed as follows:

Questions by the Counsel for Claimant.

1st question. State all you know in relation to an offer of the Mexican government to purchase out New Helvetia, or Sutter's fort, after it was made?

Ans. I think some time in the latter end of the year 1845, November,

I think, a gentleman by the name of Andres Castillero, a Mexican, arrived at the town of Sonoma, where I resided, in company with Gen'l José Castro, and requested of me to accompany them to New Helvetia, Gen'l Sutter's fort. As he reputed to me, his object was to purchase Capt. Sutter's establishment on account of the Mexican government. I proceeded with him in company with Gen'l Castro and Col. Prudon. On our arrival at the fort, Castillero, the commissioner, had an interview with Capt. Sutter, relative to the purchase of the establishment. He offered him sixty thousand dollars, on condition that he (Capt. Sutter) would leave California. Capt. Sutter, as I understood, asked him eighty thousand dollars. The next following morning I spoke to Capt. Sutter on the subject, and advised him to take sixty thousand dollars, on conditions that he would pay him down the money and remain in the country. The commissioner informed me afterwards that he did not negotiate with Capt. Sutter, in consequence of his demanding the pay down.

[Objected to by the U. S. law agent as hearsay testimony.]

2d question. From where did this commissioner draw his authority?

Ans. The commissioner informed me that he was sent here by the government of Mexico to purchase Capt. Sutter's establishment, as there was a jealousy on the part of the government, of the position Capt. Sutter had on the frontiers, as he had protected foreigners coming across the continent to the country.

3d question. Do you know of Capt. Sutter rendering services to the country, civil or military?

Ans. I do know of Capt. Sutter's having civil and military command of the northern district known as Sacramento. I think that Capt. Sutter received his command (or commission) in 1838 and 1839, and held that position up to the change of the flag, in 1846, eighth day of August of the same year.

4th question. Do you know anything of the uses and customs of the Mexican government in making compensation for services by grants of land?

[Objected to by the U. S. law agent, as no custom can vary the law.]

Ans. I know of grants being given for services in the country.

Cross-examined by the U. S. Law Agent.

1st cross-int. Where did you first know Capt. Sutter?

Ans. I think it was in the year 1838, may be 1837, in this place.

2d cross-int. Did you ever know of any other attempt of the government of Mexico to buy land from private citizens in California?

Ans. I did not; this was the first instance of the kind.

3d cross-int. Had Capt. Sutter his cannon mounted in his fort when you made that visit?

Ans. He had his cannon mounted.

4th cross-interro. Were there any title-deeds exhibited, showing his right to occupy the land?

Ans. There were no titles exhibited in my presence.

5th cross-int. Was Gen'l Castillero's instructions, to buy out Capt. Sutter, in writing?

Ans. I did not see them.

6th cross-int. What do you know about them?

Ans. All I know about them was verbally from Mr. Castillero to myself; he told me that he had them in writing, as well as a large sum of money in blank checks, with the president's signature to them.

Direct examination resumed by Counsel for the Claimant.

1st question. When was the offer of the Mexican government first known in California?

Ans. It was known to me on the arrival of Mr. Castillero at Sonoma, I think in the latter end of 1845.

2d question. Do you know anything in relation to the opposition made by the U. S. consul, then in California at that time?

Ans. I do not know.

Cross-examination resumed.

1st int. When was the object of Castillero in getting rid of Capt. Sutter first publicly known?

Ans. It was on his (Castillero) return from Sacramento, as he had not effected the negotiation with Capt. Sutter.

The following objections were made by the U. S. law agent to the above deposition:

1st. Because it contains hearsay testimony.

2d. Because the testimony is wholly irrelevant.

3d. It is not the best testimony, as other and better appears in the deposition, and not produced.

JACOB P. LEESE.

Subscribed and sworn to before the commissioners, sitting as a board, this 18th July, A. D. 1854.

Attest: GEO. FISHER, *Sec'y*.

Filed in office July 18th, 1854.

GEO. FISHER, *Sec'y*.

Recorded in Ev. B., vol. 5, p. 178.

GEO. FISHER, *Sec'y*.

Deposition of Abner Bryan.

UNITED STATES LAND COMMISSION,
San Francisco, July 18th, 1854.

On this day, before the commissioners sitting as a board, came Abner Bryan, a witness in behalf of the claimant, John A. Sutter, case No. 92, who, after being duly sworn, deposed as follows:

Questions by the U. S. Law Agent.

1st question. Were you at the fort of Capt. John A. Sutter, on the south bank of the American river, in the year 1845, when Jacob P.

Leese, Gen'l Castillero, and others paid a visit to Capt. Sutter? If yea, state what transpired then, and what was the object of the visit, as explained at that time?

Ans. I was present, and Gen'l Castro, Leese, and others came to New Helvetia. Gen'l Castro, so called and known to us as Gen'l Castro. It was a meeting of the emigrants who came across the plains from the States to California, and the cause of the meeting was to hear what Gen'l Castro had to say to us. He got up when there was many assembled; he spoke for a considerable length of time. I did not understand what he said, not understanding the language which he spoke.

Mr. Leese arose and said he would explain or interpret what Gen'l Castro had been saying. The object of his coming there, he had been informed we were trespassing upon the rights of his people or subjects; went on further to say that the Gen'l was happy to find us all quiet and peaceable; that he wished us to go to the different missions around; we should have houses to live in and gardens to cultivate, and when we became naturalized citizens we should have land.

Shortly after that there was a notice stuck up on Capt. Sutter's door *a* New Helvetia for each and every one who was not a naturalized citizen of California or Mexico to leave the country immediately, as explained to us by Capt. Sutter and others, not knowing the language in which it was written.

2d question. When did you first know Capt. Sutter? Did he at that time have any of his family in the country? When did his family, or any part, arrive in California?

Ans. I knew him first the 6th November, 1845, when I arrived at New Helvetia, and became acquainted with Capt. Sutter; he had none of his family at that time in California. I never knew any of his family until 1848; I don't know when they arrived.

3d question. State whether from the character of your intercourse with Capt. Sutter you would probably have known whether his family were in California prior to the year 1848.

Ans. I think I should have known it, that they were there. I had frequent intercourse and conversation with Capt. Sutter. I understood from him that his family were not in California.

[Objected to by the claimant's counsel to the foregoing question and answer.]

Cross-examined by Claimant's Counsel.

1st cross int. When did you arrive in California?

Ans. On the 6th Nov., 1845, at New Helvetia.

ABNER BRYAN.

Sworn to and subscribed to before the commissioners sitting as a board, this 18th July, 1854.

GEO. FISHER, *Sec'y.*

Filed in office July 18th, 1854.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 5, p. 180.

GEO. FISHER, *Sec'y.*

Deposition of Henry L. Ford.

UNITED STATES OF AMERICA,
State of California, ss.

SAN FRANCISCO, *March 12th*, 1855.

This day personally came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, Henry L. Ford, a witness on behalf of the claimant, John A. Sutter, in case No. 92 on the docket of said board, and said witness being duly sworn, deposed as follows:

The U. S. law agent is present.

Questions by Mr. Howard, for Claimant.

1st question. What is your name, age, and residence?

Ans. My name is Henry L. Ford; my age 31 years; my residence Colusi county, California.

2d question. Were you in Santa Barbara, California, in the winter of 1844 and 1845; if yea, in what capacity?

Ans. I was there in the latter part of January and early part of February, in the capacity of a soldier under Capt. Sutter.

3d question. Do you know anything of a grant of land being made at that time to Capt. Sutter; if yea, by whom was it made, where was the land situated, and state all you know about it?

Ans. Shortly before we left Santa Barbara, say from the 6th to the 10th of February, 1845, Gen'l Micheltorena made a speech in which he said that he granted to Capt. Sutter all the land he had claimed or asked for (I do not remember his exact words) in the Sacramento valley, and also that he had made grants of all the lands in the Sacramento valley, for which he had previously issued decrees of permission to settle. This speech was made to the foreign volunteers, composed of Americans, English, Irish, and others. In April, 1845, after I had returned to New Helvetia, I asked Capt. Sutter to let me see this general grant of Micheltorena for the lands in the valley, and he showed it to me, and also showed me a grant of a sobrante to himself and son. The grants were signed by Micheltorena.

4th question. Were you acquainted at that time with the handwriting of Micheltorena? If yea, state your means of knowledge.

Ans. I never saw him write; I saw several orders during the campaign which he had signed, and I have a passport which was signed by him at Monterey in 1844. I cannot say that I know his handwriting; I can only say that the signature of his name to these grants resemble those which I have seen to the orders and passport before mentioned.

5th question. From your knowledge of his signature, do you believe his signature to said grants of Sutter, which Sutter showed to you, were genuine?

[5th question objected to as leading.]

Ans. I should believe them to be genuine.

6th question. Look at the paper now shown you, marked "A, P, L," as an exhibit to this deposition, and state whether you recognise it as a copy of any paper you have before seen; and if yea, of what paper?

[6th question objected to as leading.]

Ans. To the best of my knowledge, this is a very good copy of the grant shown me by Capt. Sutter in 1845.

7th question. Have you ever seen the map accompanying the title of Sutter; if yea, where?

Ans. I saw a map which was said to have been drawn by Captain Vioget; it was shown to me at the same time the papers were shown me by Capt. Sutter, in 1845; it was a map of the lands of New Helvetia. I think this was written on the map, if I recollect right.

8th question. Look at the map now shown you, marked "B, P, L," as an exhibit to this deposition, and say if you recognise it as a copy of any other map you have seen; if yea, of what one?

Ans. To the best of my recollection, it is a very good copy of the map shown me by Capt. Sutter in 1845.

9th question. How long have you been acquainted with New Helvetia?

Ans. Ever since 1844.

10th question. Did Capt. Sutter cultivate any land in 1845; if yea, where was it situated?

Ans. He cultivated some land south and west of the fort. The fort was situated on the south side of the American river, about a mile or a mile and a half from its junction with the Sacramento river. He also cultivated some up at the Hock Farm that year.

11th question. State whether he that year occupied any other land, and in what way?

Ans. He occupied the land lying immediately north of the mouth of Feather river, on the Sacramento; he had 2,000 head of cattle and some corrals there. He had a sheep farm in 1844 on the southwest side of the Buttes, and he had several bands of mares on the east side of Feather river in 1845; he removed his sheep on the American river, about a mile and a half east of the fort, on the same side of the American. I saw no occupation on the east side of the Sacramento, between the mouths of the American and Feather rivers.

Cross-examined by the U. S. Law Agent.

1st question. Did you, in the winter of 1844, understand the Spanish language; if yea, how long had you known it and where did you learn it?

Ans. I did not understand it perfectly; what I knew of it I learned at Monterey and at San José; the most I learned of it I learned of Mr. Hartnell, in Monterey. I arrived in the country in 1842, and commenced immediately to pick up the language from the natives. I knew enough of the Spanish language in the winter of 1845 to transact business, to buy and sell, and trade in stock with the natives, without any

interpreter. I could read Spanish at that time, in 1845; there were some words which I did not understand. I never had written any Spanish up to that time, that I recollect of.

2d question. How long was Micheltorena addressing you at the time you have mentioned, and in what language did he speak?

Ans. He might have been a half an hour or three-quarters engaged in speaking; but I cannot say precisely what the *the* length of his speech was. He spoke in the Spanish language.

3d question. In what connection did he say he had granted to Capt. Sutter all the land he had asked for—on what subject was he then speaking?

Ans. He was addressing the volunteers, to encourage them to continue in the service. There was some trouble in camp, and the soldiers talked of turning back; and he was telling them what he had done and what he was willing to do to compensate them for their services; and it was in this connection he spoke of what he had done for Captain Sutter.

4th question. Is it not possible and likely that you may be mistaken as to the language of Micheltorena in that speech?

Ans. The address was translated publicly at the time by Captain Sutter into English; and I do not think it is at all likely that I was mistaken, because Capt. Sutter's interpretation was the same as I understood the language of Micheltorena at the time to mean, and was substantially as I have stated.

5th question. How long after that speech before you were shown the papers by Capt. Sutter?

Ans. It was nearly two months; I cannot say exactly the time.

6th question. Where were you, and in what house, and who was present, when you saw said papers?

Ans. I was at the adobe house of Sutter's room, in the southeast corner of the house at the fort. There was a man by the name of John Williams present; he is dead; and I think his brother James was present, but I am not certain; he is living. I recollect no others.

7th question. From what place did Capt. Sutter produce said papers?

Ans. He took them from a bundle of papers he had, either from a desk or trunk in the same room. I am not positive whether he took the bundle from the trunk or desk.

8th question. How many other papers did he show you at the same time?

Ans. He showed me none, excepting the general title which was issued to some 12 or 15 settlers, who had petitioned for lands in the valley, and his own title.

9th question. How long were examining them?

Ans. We were a half hour or three-quarters looking at the papers and talking about them; we may have been an hour and a half in the room together.

Question 10th. Which did you notice first?

Ans. The general title was the first I noticed.

11th question. Did you ever see either of those papers afterwards?

Ans. No; I never saw either of those papers; I have seen copies of them.

12th question. How does it happen that you can, at this distance of time, swear to the paper shown to you as a copy?

Ans. I think I stated in my answer that it resembled certain portions of the paper which I recollected; I do not pretend to swear that it is a true copy.

13th question. What were the boundaries of the grant shown you at that time, and what were its conditions and date?

Ans. I do not recollect any except the northern boundary; that was called for in the grant as the "Three Buttes." The conditions of the grant, as I can recollect, were, that he could enclose it as not to obstruct the roads; he was to apply to the proper authority, to be put in possession of it—and some other conditions which I do not now recollect. The date was of the year 1845; but I do not recollect whether it was January or February, though it was one or the other of those months.

14th question. How, then, can you know this to be a copy?

Ans. I have already answered, as to the best of my recollection upon that subject, that this resembles the portions of the original in those particulars which I remember.

15th question. How many lines of latitude and longitude were marked on the map shown to you by Capt. Sutter?

Ans. I don't recollect.

16th question. What figures were marked therein to indicate the latitude; can you state any one of the numbers?

Ans. As near as I can recollect, there was on the northern line figures 38; I don't recollect; I am not sure I am correct about that; there may have been other figures, but I do not recollect them.

17th question. Did not John Bidwell keep Capt. Sutter's papers in 1845?

Ans. He kept his books; I do not think he kept his private papers; I do not know that he did; I know that he was his book-keeper. Sutter's private papers, at the time I have mentioned, were in his own possession.

18th question. Did you read each of the papers named, and is it upon your recollection only, after a lapse of ten years, you speak of the contents of a paper written in a language you imperfectly understood?

Ans. I read each of them; I read Spanish well enough at that time to understand the papers, and Capt. Sutter also read to us portions of that Sobrante grant, and his interpretation of it was the same as I understood it from reading it myself. My recollection of the papers is from what I learned from them at that time.

HENRY L. FORD.

Subscribed and sworn to before me, on th latitude in your form for
e numbers laid down on

ed them from the map;
Filed in office March 20th, 1855. ey are the same.
GE marked on said map as
Recorded in Ev. B., vol. 11, p. 64. t numbers designated it?
GEC ch a line or not on the

Depo. of Juan B. Alvarad said diseño running
o and Feather rivers?
UNITED STATES OF AMERICA,
State of California, ss. ch a line or not.
SAN FRANCISCO, mouth of the Amer-

This day personally came before Peter Lott, cor
testimony to be used before the board of U. S. lar
said State, Juan B. Alvarado, a witness on beha e lines of latitude
John A. Sutter, in case No. 92 on the docket of s uth?
witness being duly sworn, deposed in Spanish, wh n to this matter of
by the secretary as follows:
The U. S. law agent is present. ne running on the

Questions by Mr. Howard for Claim

1st question. What is your name, age, and place east side of said
Ans. I am 46 years of age; my name is Juan B. A
sidence Contra Costa county, California.
2d question. What office did you hold in California de of the Amer-
Ans. I was, in that year, constitutional governor of
3d question. Did you, while exercising that office, nes. I do re-
of land to Capt. Sutter; if yea, when and what land di of all the riv-
him, and how much?
Ans. I made a grant of land to Capt. John A. Sutter st and where
I was governor as aforesaid. The grant was for a tra
Sacramento valley, which was named New Helvetia by
The quantity granted was eleven leagues. ting to be a
4th question. Can you name any of the boundaries of dotted lines
land? hey held on
Ans. The boundaries were designated by degrees of l those dot-
numbers of which I do not remember, and the land was
lying on the Sacramento and Feather rivers. There were t the map
designated diseño accompanying the grant, and I remember on of the
Picos'' was named as a point of boundary.
5th question. Look at the expediente filed in this case, ma cts on the
P. L.,'' as an exhibit herein, and state if you know what because
whether you recognise it as a copy of the original in the archi I made
Ans. This is a correct traced copy from the archives in the latitude;
general's office of the petition of Capt. Sutter, and in pages the map
in the traced copy of the form of a grant which I made, and d dotted

Ans. The general title was the first I noticed.

11th question. Did you ever see either of those papers afterwards?

Ans. No; I never saw either of those papers; I have seen copies of them.

12th question. How does it happen that you can, at this distance of time, swear to the paper shown to you as a copy?

Ans. I think I stated in my answer that it resembled certain portions of the paper which I recollected; I do not pretend to swear that it is a true copy.

13th question. What were the boundaries of the grant shown you at that time, and what were its conditions and date?

Ans. I do not recollect any except the northern boundary; that was called for in the grant as the "Three Buttes." The conditions of the grant, as I can recollect, were, that he could enclose it as not to obstruct the roads; he was to apply to the proper authority, to be put in possession of it—and some other conditions which I do not now recollect. The date was of the year 1845; but I do not recollect whether it was January or February, though it was one or the other of those months.

14th question. How, then, can you know this to be a copy?

Ans. I have already answered, as to the best of my recollection upon that subject, that this resembles the portions of the original in those particulars which I remember.

15th question. How many lines of latitude and longitude were marked on the map shown to you by Capt. Sutter?

Ans. I don't recollect.

16th question. What figures were marked therein to indicate the latitude; can you state any one of the numbers?

Ans. As near as I can recollect, there was on the northern line figures 38; I don't recollect; I am not sure I am correct about that; there may have been other figures, but I do not recollect them.

17th question. Did not John Bidwell keep Capt. Sutter's papers in 1845?

Ans. He kept his books; I do not think he kept his private papers; I do not know that he did; I know that he was his book-keeper. Sutter's private papers, at the time I have mentioned, were in his own possession.

18th question. Did you read each of the papers named, and is it upon your recollection only, after a lapse of ten years, you speak of the contents of a paper written in a language you imperfectly understood?

Ans. I read each of them; I read Spanish well enough at that time to understand the papers, and Capt. Sutter also read to us portions of that Sobrante grant, and his interpretation of it was the same as I understood it from reading it myself. My recollection of the papers is from what I learned from them at that time.

HENRY L. FORD.

Subscribed and sworn to before me, on the 13th M'ch, 1855.

PETER LOTT,
Commissioner.

Filed in office March 20th, 1855.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 11, p. 64.

GEO. FISHER, *Sec'y.*

Depo. of Juan B. Alvarado.

UNITED STATES OF AMERICA,
State of California, ss.

SAN FRANCISCO, *M'ch 15th*, 1855.

This day personally came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, Juan B. Alvarado, a witness on behalf of the claimant, John A. Sutter, in case No. 92 on the docket of said board; and said witness being duly sworn, deposed in Spanish, which was interpreted by the secretary as follows:

The U. S. law agent is present.

Questions by Mr. Howard for Claimant.

1st question. What is your name, age, and place of residence?

Ans. I am 46 years of age; my name is Juan B. Alvarado; my residence Contra Costa county, California.

2d question. What office did you hold in California in 1841?

Ans. I was, in that year, constitutional governor of California.

3d question. Did you, while exercising that office, execute a grant of land to Capt. Sutter; if yea, when and what land did you grant to him, and how much?

Ans. I made a grant of land to Capt. John A. Sutter in 1841, while I was governor as aforesaid. The grant was for a tract of land in Sacramento valley, which was named New Helvetia by the grantee. The quantity granted was eleven leagues.

4th question. Can you name any of the boundaries of said tract of land?

Ans. The boundaries were designated by degrees of latitude, the numbers of which I do not remember, and the land was described as lying on the Sacramento and Feather rivers. There were other points designated diseño accompanying the grant, and I remember the "Tres Picos" was named as a point of boundary.

5th question. Look at the expediente filed in this case, marked "A. P. L.," as an exhibit herein, and state if you know what it is, and whether you recognise it as a copy of the original in the archives?

Ans. This is a correct traced copy from the archives in the surveyor general's office of the petition of Capt. Sutter, and in pages 5 and 6 in the traced copy of the form of a grant which I made, and which is

now in my handwriting in said archives, except at the end of "Words Mong., 18 Junis, S. 4 bu'd;" these words were written by Jimeno, the secretary, as a memorandum. The diseño was at the same time given to the secretary, and I do not know why it is not now with the papers in the archives.

6th question. Was any paper given to Sutter as evidence of his title? If yea, what was it?

Ans. Yes, there was given to said Sutter a title, of which this just exhibited is an exact copy, except that the one given to Sutter was signed by Manuel Jimeno as secretary.

7th question. Look at the map now shown you marked "B. P. L.," as an exhibit herein, and say whether you recognise the same.

Ans. This map seems to me to be an exact representation of the one which Sutter presented at the time of the petition and grant, except that on the map there before me there were marked, on what is here represented as the "Rio de las Plumas," localities which Sutter thought would be suitable points for the settlement of the families under him, and some also on the Sacramento river. I recognise the bends of the river Sacramento as being the same as on the original map, and the "Three Peaks" *on* the same as on that map, and also the place marked here "New Helvetia" is the same. I named the degrees of latitude in the grant to said Capt. Sutter as he had them marked on his diseño. I told him he did not know the latitude, but as he insisted on having them so, I described them accordingly.

8th question. What do you understand by "las tierras senigadas," mentioned in the 3d condition of the grant?

Ans. That phrase means swamp or tule lands, overflown and unfit for cultivation.

Cross-examined by U. S. Law Agent.

1st question. Where did you last see the map which was shown to you at the time you made this grant?

Ans. I never saw it after that occasion, when it was before me for the purposes of making said grant.

2d question. Had you ever seen it before that time, and how much did you examine it?

Ans. I do not remember to have seen it before that time; I examined it then with a view to making the grant. I never have seen it on other occasions; but I do not remember it if I did.

3d question. Who drew the form for the title?

Ans. I did, myself.

4th question. How long before you signed the title was it that you made this form?

Ans. It must have been a short time. It was all done while Capt. Sutter was then at Monterey on the business of his application.

5th question. Had you the map before you when you drew the said form of the grant?

Ans. Yes, I had it before me.

6th question. In settling down the lines of latitude in your form for a grant, did you mark them according to the numbers laid down on diseño?

Ans. Yes, I made them the same. I copied them from the map; unless I made some mistake copying them, they are the same.

7th question. Was there a line of latitude marked on said map as running through the "Tres Picas?" If yea, what numbers designated it?

Ans. I do not remember whether there was such a line or not on the diseño.

8th question. Was there a line of latitude on said diseño running through or near the jurisdiction of the Sacramento and Feather rivers? If yea, how *as* that line numbered?

Ans. I do not remember whether there was such a line or not.

9th question. Answer the same question to the mouth of the American river.

Ans. I do not remember.

10th question. On said original diseño were there lines of latitude marked with the numbers increasing towards the south?

Ans. I cannot remember; I paid but little attention to this matter of latitude, as I knew nothing about its correctness.

11th question. Was there on said diseño a dotted line running on the west, and nearly parallel with the Sacramento river?

Ans. I do not remember whether there was or not.

12th question. Was there such a dotted line on the east side of said river on said diseño?

Ans. It may be there was, but I do not remember it.

13th question. Was there any dotted lines on either side of the American or Feather rivers on said diseño?

Ans. I was confused by the questions as to parallel lines. I do recollect that there was dotted lines on both sides, I think, of all the rivers marked on the diseño.

15th question. Can you state where they were nearest and where furthest from the rivers?

Answer. I cannot remember.

16th question. If a paper were shown you now, purporting to be a copy of that original diseño, could you detect whether those dotted lines had been changed from the position and direction which they held on the original?

17th question. Since you do not recollect the localities of those dotted lines, nor of the lines of latitude, how can you state that the map exhibited to you in this deposition is a correct representation of the diseño you had before you when you made the grant?

Ans. I stated that it was correct, because the national objects on the diseño were noticed in the form of grant which I made, and because I remember the general outline of it when I made the grant; I made it more with reference to the natural objects than to the lines of latitude; I did not intend to be understood that the minute details of the map were the same, as I have already stated the lines of latitude and dotted

lines might be different on this copy, and I could not detect it from my memory of the original.

18th question. Could there not have been in the copy an additional line of latitude marked, which was not on the original, without your detecting it?

Ans. I cannot say, for I paid so little attention to this matter of latitude.

19th question. Look again at the form of the grant drawn by you, and state what is the eastern boundary of the land within which the eleven leagues granted were to be taken?

Ans. The margins of Feather river *as* the eastern boundary.

Re-examined by Claimant's Counsel.

1st question. Was the establishment of Sutter at this place considered of such importance by the government as to draw your attention particularly to the grant and map?

Ans. It was; the establishment was esteemed of public importance, because it furnished protection on the northern frontier and encouraged new settlements, which the government was desirous of fostering.

[1st question objected to as leading.]

2d question. Was the grant made with reference to the entire map?

[2d question objected to by law agent, as leading and attempting to vary the grant itself.]

Ans. Yes, it was, in order that Sutter might take such land as suited him, within the bounds of the map.

Cross-examined by the U. S. Law Agent.

1st question. Did you express, in the title you issued to Sutter, the true extent and meaning you had in making the grant, and would your recollection, at this distance of time, be as likely to be correct as your written intentions were as then expressed in said grant?

[1st question objected to, because there is no conflict between the terms of the grant and the testimony now given by the witness.]

Ans. I intended then to convey the meaning expressed in the writing, and it is possible my memory might differ from that writing; my intention was to grant the land Sutter asked for, but, as to these numbers of latitude, I did not understand them.

JUAN B. ALVARADO.

Subscribed and sworn to before me this fifteenth day of March, A. D. 1855.

PETER LOTT,
Commissioner.

Filed in office March 20th, 1855.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 11, p. 610.

GEO. FISHER, *Sec'y.*

[*For map see original, page* 86.]



Deposition of Jno. J. Vioget.

ITED STATES OF AMERICA,
State of California, ss.

SAN FRANCISCO, *Mch. 8th*, 1855.

This day came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, John J. Vioget, a witness on behalf of the United States, in case No. 92 on the docket of said board, wherein John A. Sutter is claimant, and said witness being duly sworn, deposed as follows:

The claimant's counsel, Mr. Howard, is present.

Questions by U. S. Law Agent.

1st question. What is your name, age, and residence?

Ans. My name is John J. Vioget; my age 55 years; my residence San Francisco county, California.

2d question. In continuation of our cross-examination to your two depositions heretofore taken in this case, state how many maps of the Sacramento valley you made and delivered to Capt. Sutter in the early part of 1841?

Ans. I made two then, and one in 1843.

3d question. Where and when did you last see either of those maps made by you in 1841?

Ans. The last time I saw either of them was in 1843. When I made my map at that time I had one of those which in 1841 before me, and made my map of 1843 a copy of the one of 1841, with some names added; one was the names of the rancherios which I did not know in 1841.

4th question. Can you state, from your present recollection, all the marks you made of either of those maps, or the locations of the lines of latitude you set down thereon?

Ans. I remember very distinctly the southern boundary on the two leagues of land of New Helvetia, and the northern and western boundary, and indistinctly the eastern boundary; then I can remember in general the outline of the maps, so as to know in the main whether one shown to me was a correct copy or not.

5th question. Look now on the map marked "B," filed herein in March 8, 1852, and state whether the line marked "lindero," latitude north 38° 49′ 32″, was on either of the copies made by you for Capt. Sutter?

Ans. The line was marked on them, but not the numbers, and I always told Sutter, or others who asked me about it, that the latitude was incorrect.

6th question. What line of latitude did you mark, as running through the fort, and what through Feather river, and what through the Buttes?

Ans. I do not remember the numbers.

7th question. Can you identify from your recollection of the original and map now shown to you as a copy, with sufficient distinctness to say whether it is an accurate copy or not?

Ans. In the main features I could tell from my recollection of the original whether any one now shown me would be a copy of them or not, but I could not say such were an accurate copy unless it had been made by myself.

8th question. Could you in any such *propose* copy now identify the lines of latitude as being the same as those in your originals?

Ans. I could not, for I never had any faith in the correctness of any of those latitudes, and have not charged my memory with them.

9th question. Can you, from your recollection, trace the lines on a map purporting to be a copy (with the river accurately laid down as you laid it) which you marked on your map as the boundary of the swamp lands on the margins of the river; or, in other words, if those boundaries were not marked on said copy, but only the line of the river, could you supply those lines of boundary; and if you were to see a copy with those lines of boundary of the swamp lands marked on it, could you say whether they correspond accurately with the lines on your originals?

Ans. I could not now from my memory supply the lines of the tulares or swamp lands in a map which was made without them, nor could I say, if they were laid down on a professed copy, whether they corresponded with my original, unless that copy were one which I knew I made myself. But I will further state, that on my original maps those lines of tulas swamps were dotted down from mere estimates of a *river* of the eye, and without measurements I would not pretend to vouch for their correctness.

10th question. When and from whom did you first learn that the term New Helvetia was applied to lands in the Sacramento valley?

Ans. I think it was early in 1840. The way I first learned it was from the letters of Capt. Sutter, who used to date them at his place by that name.

11th question. What was the extent of the lands called New Helvetia at that time?

Ans. I do not know, for that was before there was any grant or any survey, and no one could say what the limits would be when the grant should be made. Capt. Sutter gave the name to his place before the boundaries were established.

12th question. Were those lines dotted along the margins of the river by you, intended as boundaries of any particular tract of land surveyed by you?

Ans. They were the estimated lines of the tulares, and not intended as the boundaries of any rancho or tract of land surveyed by me.

Cross-questioned by Mr. Howard for Claimant.

1st question. What did you establish as the southern boundary of the "New Helvetia" by your survey and map thereof?

Ans. Of the two leagues, embracing the fort, I made the southern boundary at the southwest corner of a lagoon, where I placed a stake at the time. That lagoon, I suppose, is 3 or 4 miles south of Sacramento city, and perhaps two miles from the Sacramento river.

2d question. Look at the map now shown you, marked "A. P. L.," and filed herewith as an exhibit to this deposition, and state who made it, when, where, and upon what date, and for what purpose, and under what circumstances it was made?

[Objected to by law agent as a new matter, illegal in cross-examination.]

Ans. I made the map, at the request of Capt. Sutter, in the year 1843, in Yerba Buena. I copied it from one of the original maps I made in 1841, to the best of my recollection.

3d question. Is it an exact copy of said original in its main features?

Ans. It looks so; and I feel no doubt in my own mind of its being a correct copy, with the differences before stated in this deposition respecting the dotted boundaries of the tule lands.

4th question. What became of the original maps you made in 1841?

Ans. I gave them to Capt. Sutter.

5th question. In whose handwriting is this map last shown you, marked "A. P. L.?"

Ans It is in my own handwriting.

Re-examined by U. S. Law Agent.

1st question. How did you know the place you surveyed was to be the place, by boundaries, to be called "New Helvetia," and how did you know what would be the southern boundary of "New Helvetia?"

Ans. I was governed by Capt. Sutter's instructions. I knew nothing about *the* then but what he told me.

2d question. Did Capt. Sutter give names to the tracts you then surveyed?

Ans. Yes, the name of New Helvetia was applied to both tracts, the one on Feather river and two leagues below on the American fork, and it was so marked on the maps. The words on the map were given to me about as follows: "Map of the lands for the colonization of New Helvetia." This was in Spanish on the maps.

JOHN J. VIOGET.

Subscribed and sworn to before me, on the 8th day of March, A. D. 1855.

PETER LOTT, *Commissioner*.

Filed in office March 20th, 1855.

GEO. FISHER, *Sec'y*.

Recorded in Ev. B., vol. 11, p. 556.

GEO. FISHER, *Sec'y*.

[*For 2 maps see original, page* 90.]

Espediente.—Certified copy from the Office of the Surveyor General.

Espediente.

Promovido por Dn. Juan Augusto Sutter, en solicitud de un terreno que se halla à las margenes del Rio Sacramento.

1841 250

A. P. L.—Exhibit to depo. of Juan B. Alvarado, March 15, 1855.

[2 S. D. K.]

Sello Tercero—Dos Reales.

Habilitado provicionalmente por la aduana marit'a del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

JIMENO. ANTONIO M'A OSIO.

[SEAL.]

Ex'mo S'or Gob'r de este Departamento:

Juan Augusto Sutter, natural de la republica Suisea, naturalisado en la Republica Mejicana, y actualmente radiendo en este departam'to ante la notocia justificacion de V. E., con el respeto debredo hace presente; que desde su ingero a este pais y deceoso de cultivar una parte de los muchos terrenos baldios que tiene, recabo de V. E., su superior aprobacion para establecese en el terreno que hoy ocupa; arreidolo á algunas familias laboriosas que quicieran seguirlo y como asi trabajo acedero promete y a espenansas lesongenas a su esta blicimiento en lo particular y veritajas al departam'to en lo general, atendiendo a que a ejemplo de los que lo siguen se han despentando ideas laboriosas en las tenias habitantes de este pais: siroiendo a la vez pr. el parage de su citacion, de una fuente nase, va a las incursiones de las trebas barbaras ó las poblaciones que de una escuela decibir locasion ya a los indigenos barbaras ya a los reducidos o miciones quienes en
[3 S. D. K.] la senela delatada de años q han estado reducidos, no han cedo miembras utiles a la sociedad comun, como hoy tiene el que subscribe la satisfaction de que lo sean debido a sus enfatigables taneas. Por todas estas razones se bé en la necesidad pra. en grandecer su impresa y establecer doce familias de suplicar a la bondad de V. E., se sirva condecerle once leguas de terreno en su establicimiento nominado la Nueva Helvetia, cituado acea el norte con total arreglo al terreno estado en el diseño que tiene el honor de acompañar á V. E.; no incluyendose en las once leguas citadas el terreno que penidicamente es userandado de agua en el invierno y protestando a V. E., y la nacion Mejicana que seran pr. el peluente observadas las leyes de colonizacion vi gentes y todas las que haban de esta materia. Portanto A. V. E. suplico se suña en usos de las facultades con que enibetan las leyes, acceder a su solicitud y interponer a la vez su poderoso—

[4 S. D. K.]

Sello Tercero—Dos Reales.

Habilitado provicionalmente por la aduana marit'a del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

JIMENO. ANTONIO MARIA OSIO.

[Aduana maritima Monterey.]

—impulso, ante el gob'no supremo depart'al de la nacion, a fin de recabar su superior oprobacion con cuya gracia recibire un beneficio el que subscribe y sup'mento la agricultura de este pais.

Monterey, Junio 15, de 1841.

Ex'mo Sr.

J. A. SUTTER.

[5 S. D. K.]

Titulo.

Por cuanto Dn. Augusto Sutter, natural de la Republica Suiza y naturalizado en la nacion Mejicana, ha pretendido conforme a la ley de 18 de Agosto, de 1826, y al reglamento de 21 de Noviembre, de 1828, para su beneficio personal y el de doce familias onze leguas de tierra a las margines del rio del Sacramento en los terrenos valdios de la frontera del norte para colonizar los y formentarlos en los terminos referidos en las dispociones mencionadas para cuya fin ha herreditado sufecientamente sus bensadus buena conducta y demas calidedes que son requerridas en estos casos toniendo, y a anticipadas sus enederaes apresos su constante empeño y a lo verdaderamente patriotico en favor de nuestras instituciones reduciendo à la civilisar una posecion de Indios salvajes naturales de aquellas fronteras é informado suficienta'te este gob'no de que los terrenos mencionado no pertenecen a la propiedad particular de ningun individuo, pueblo o corporacion que se hallan por consiguiente en las clasificadas en lanejeridas leyes y conforme o las facultades que me son conferidas en nombre de la nacion Mejicana he venido en concederle al mencionado Sr. Dn. Augusto Sutter, jr. las presentes letras para si y sus colonisados el terreno referido con el nombre de la Nueva Elvesia, sujetandose a la aprobacion o des reprobacion del sup'm gobierno y de la E. J. departam't bajo las condiciones siguientes:

[6 S. D. K.] 1a. Podra sercarlo sin prejudicar las travesias caminos y servidumbres y principalmente el trafico y nabegacion de los rios de los deferentes trebus.

2a. Mentendra a los naturales indigenos de aquellos puntos en el goce y libertad de sus poseciones sin molestar y solo podrá reducivalos a la civilisacion pr. los medios de la prudencia y de las relaciones amistases sin obtener las facultades del gob'no.

3a. El terreno de que se le hace donacion es de onze sitios de ga-

nado mayor comprendidas en la estension que demarcaran el diseño que corre agregado al espediente sin incluir las tierras niregadas por el impulso y los concernientes de los rios siendo sus linderos por la parte del norte las tres picos y la latitud 39 41 45 norte, al este las margenes del Rio de las Plumas, al sur latitud 38 49 32 W., al oeste el Rio del Sacramento.

4a. Cuando se le confirme esta propiedad solicitara del juez respectivo la posecion del terreno para que son medido conforme á ordenanza quidando el Sobrante que resulte a beneficio de la nacion para los usos que le convengan.

6. A mando que teniendose este por firme y valedero este titulo se tome razon de el en el libro que corresponde y se el espediente a la ex'ma S. departamental de las Californias, lo mando firme de que doy fée. Mont'y, 18 de Julio.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and, as such, now having in my office, and under my charge and control, a portion of the archives of the former Spanish and Mexican territorial or department of Upper California, do hereby certify that the six preceding and hereunto annexed pages of tracing paper, numbered from one to six inclusive, and each of which is verified by my initials, (S. D. K.,) exhibit a true and accurate copy of certain documents now on file and forming part of the said archives in my office.

In testimony whereof, I have hereunto signed my name officially, and affixed my private seal, (not having a seal of office,) at the city of San Francisco, this 13th day of December, 1851.

SAM'L D. KING,
Surveyor Gen'l Cal'a.

Filed in office Oct. 1st, 1853.

GEO. FISHER, *Sec'y.*

John A. Sutter.—C.—Title and Translation, A. P. L.—Exhibits to the Depo. of Henry A. Ford.

Manuel Michelt'a, General de Brigada del Ejercito Mejicano, Ayud'te General de la Plana Mayor del mismo, Gobernador, Comand'te General y Inspector del Departamento de las Californias.

Por cuanto D. Juan Augusto Sutter, y su hijo Juan A. Sutter, Mejicano por naturalizacion, han pretendido pr. sus beneficio personal, y el de su familia el Sobrante del su rancho nombrado Nueva Helvetia segun esplica el diceño que corre en el espediente, practicadas previam'te las diligencias y averiguaciones con con'tes segun lo dispuesto por leyes y reglamentos usando de las facultades que me son conferidas a nombre de la nacion Mejicana y por los mentos y servicios que ha prestado y esta prestando actualm'te el S'or Sutter. He venido en concederles el ter

reno mencionado declarandoles la propiedad por las presentes letras sujetandose a la aprobacion de la eccelentisma assemblea departamental y bajo las condiciones seg'tes.

1a. Podran cercarlo sin perjudicar las travecias caminos y servidumbres. Lo disputara libre esclusivamente destinandolo al uso ó cultivo qe. les convenga.

2a. Solicitaran del juez respectivo qe. les de la posecion juridica, en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondran á mas de los majoneras algunos arboles frutales ó silvestres de alguna utilidad.

3o. El terreno de que se hace mencion es de viente y dos leguas de ganado mayor segun explica el diseño qe. corre en el expd'te.

4a. El juez que diere la posecion lo hara medir conforme á ordenanza, que dando el Sobrante que resulta à la nacion para los usos conven'tes.

5a. En consecuencia mando qe. serviendoles de titulo el presente y teniendose por firme y valedero, lo presentaran para qe. se toma razon en el libro respectivo y se entrigue a los interesados para su resguardo y demas fines. Dado en este papel corr'te por falta del sellado correspond'te.

Santa Barbara, el cinco de Febrero, de mil ochocientos cuarenta y cinco.

(Signed) MANUEL MICHELT'A.
(Signed) JUAN CASTANEDO, *S'rio Interim.*

Filed in office March 8th, 1852.

GEO. FISHER, *Sec'y.*

[1 S. D. K.]
Sello Cuarto—Dos Reales.

[Aduana maritima de Mont'y.]

Habilitado provicionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta cuatro, y mil ochocientos cuarenta y cinco.

PABLO DE LA GUERRA,
Por ans'a del Admo'r,
GUELL'O ED'O HARTNELLO.

MICHELTORENA.

Exhibit O.—Expediente of Wm. A. Leidesdorff.

Exm'o S'or Gobernador:

Co. Guillermo A. Leidesdoff, natural de Denmarca, y naturalizado en la republica Mejicana, ante V. E. con toda sei mission y respeto; se presente y dice. Que hallandose, hallandose posedor de un gran numero de ganado mayor galezeoso a tener un sitio en propiedad para formentarla, he encontrado uno baldio colindante con los terrenos de Señor Sutter, segun espleca el adyunto diseño que debidamente acompana, dicho sitio es en el orillo del rio de los Americanos, y consiste

de cuatro leguas de largo por el este y dos leguas de ancho por el sur. Por tanto A. V. E. suplica rendivamente que concede dicho terreno por lo cual recibire merced, y gracia perando no ser de malecia y lo necesario.

Monterey, Agosto de 1844.

GUILLERMO A. LEIDESDORFF.

[2 S. D. K.]

MONTEREY, *Agosto* 23, *de* 1844.

Inf'e el s'rio del des pacho tomando previam'te los necesarios.

MICHELTORENA.

Como despone el ex'mo s'or governador sirvase informar el S'or Sutter, sobre el contenido de la precedente instancia.

Monterey, f'ha la misma.

MANUEL JIMENO.

[3 S. D. K.]

Ex'mo S'or Gobernador:

El terreno que se solicita esta baldio como se acredita por el adyunto certificado, y tan bien demarcado segun aparece, en el diseño que en y en una situacion tan contigua al parage del Señor Sutter, que entiendo no haber segun incombesiente pa. que V. E. pueda concederle al interesado el terreno pretemebiendo si no tubiere V. E. otra cosa que desponer.

Monterey, Obr'e 1o, de 1844.

MANUEL JIMENO.

F'ha rot. Concedido.

MICHELTORENA.

MONTEREY, 8 *de Octubre, de* 1844.

Vista la peticion con que da principio este espediente los informes que preceden contadolo demas que se tuvo presente y de ver convino de conformidad con las leyes y reglamentos de la materia, declaro a Don Guillermo A. Leidesdorff, por las presentes dueno en propiedad del terreno que se halla situado a las margenes del rio nombrado de los Americanos, colindante con el terreno concedido a la colonia del S'or Sutter, y con las lomerias del oriente en estencion de ocho sitios de ganado mayor, hebnese el correspon'te despacho tomere ragon en el libro respectivo y dinizace este espediente á la ex'ma asamblea departam'l para su aprobacion. El E. S. Dn. Manuel Micheltorena, general de brigada del ejercito Mejicano, ayundante gra'l de la plana mayor del mismo, gobernador command'te gra'l é inspector del departamento de las Californias, asi lo mando decreto y firmo de qe. doy fée.

[4 S. D. K.]

Jurisdiccion del rio Sacramento.

El terreno que solicita en este desinisento Don Guillermo A. Liedesdoff, situado en el rio de los Americanos, por presente esta des ocupado y es el que esta representado en esu mapa y doy esta certification para los fines que convengan.

Nueva Helvetia, Agosto 4, de 1844.

J. A. SUTTER.

[6 S. D. K.]

Sello Primero—Ocho Pesos.

Habilitado provicionalmente por la aduana marit'a del puerto de Monterey, en el departamento de las para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta cinco.

PABLO DE LA GUERRA,
Por an'sa del Adm'r,
GUILLO. ED'O HARTNELL.

MICHELTORENA.

El ciudadano Manuel Micheltorena, General de brigada del ejercito Mejicano, Ayundante g'ral del mismo, Gobernador g'ral é inspector del departamento de Californias.

Por cuanto D. Guillermo A. Leidesdorff, Mejicano por naturalizacion, ha pretendido para su beneficio personal seis sitios de ganado mayor en la rivera del rio que llaman de los Americanos conviente con el toreno concidido á la colonia del S'or Sutter y con las lometias del oriente: practicadas previamente las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos de la materia usando de las facultades que me son conferidas á nombre de la nacion Mejicana, he venido en conceder el terreno mencionado sujetandose á la aprobacion de la e'ma asamblea departamental y a los condiciones siguientes:

1a. No podra venderlo, enagenarlo, impotecarlo, imponer censo, vinculo ni otro gravamen y no podra donarlo.

2a. No impedira el cultivo ni otros aprovecheam'tos que por otro terreno adquieran las Tuvigenas de ese rumbo.

3a. Podra sercarlo sin perjudicar las travesias caminos y servidumbres lo desfrutara libre y esclusivamente destinandolo al uso y cultivo que mas le acomode pero dentro de máno. fabricara casa y estara habitada.

4a. El terreno de que se hace donacion es de la estension de que ya se ha hecho mencion el juez que diere la posesion lo hara medir conforme a ordenanza, quedando el sobrante que resulte a la nacion para los usos convenientes.

5a. Si contraveniere a estas condiciones perdera su derecho al terreno y sera denunciable p. otro.

En consecuencia mando que teniendose por valedero el presente titulo, se tome razon de el en el libro respectivo y se entreque al in-

teresado para su resguardo y demas fines. Dado en Monterey aocho de Octubre de mil ochocientos cuarenta y cuatro.

MANUEL MICHELTORENA.
MANUEL JIMENO,
S'rio del Despacho.

Quedo tomada razon de este despacho en el libro respectivo a pajas 11.

JIMENO.

[*For map see original, page* 98.]

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such now having in my office, and under my custody, a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify that the nine preceding and hereunto annexed pages of tracing paper, numbered from one to nine, inclusive, exhibit a true and accurate copy of a portion of an espediente entitled "Espediente promo vido pr. Don Guillermo Leidesdorff en pretencion del terreno conocido con el nombre del Rio de los Americanos," now on file, and forming part of the said archives in this office. I further certify that other alterations and erasures appear to have been made in the espediente, similar to that in the sixth line of page six of the portions herein furnished.

In testimony whereof I have hereunto signed my name officially and affixed my private seal, (not having a seal of office,) at the city of S. F'co, Cal., the 29th day of July, 1853.

SAMUEL D. KING,
Surveyor G'l.

Filed in office Sept. 30, 1853.

GEO. FISHER, *Sec'y.*

Translation of Espediente A.

Stamp 3d—Two Reals.

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years eighteen hundred and forty and eighteen hundred and forty-one.

(Signed) ANTONIO MARIA OSIO.
(Signed) XIMENO.

[Custom-house Seal.]

Sept 1827 - Jan 1828

Translation.

To His Excellency the Governor of this Department:

John Augustus Sutter, a native of the Swiss republic, naturalized in the Mexican republic, and at present settled in this department, before the notorious justice of your excellency, with due respect, says:

That since his arrival to this country, wishing to cultivate a portion of the many existing tracts of vacant land, obtained your excellency's superior approval for the purpose to settle himself on the land which he now occupies, associated with some industrious families who were willing to follow him, and as an assiduous labor already promises flattering *expections* to his settlement individually, and advantages to the department in general, considering that the good example of those who follow him has already awakened similar ideas in the other inhabitants of the country; at the same time this settlement, from its position, proves to be a strong barrier against the incursions of the savage Indian tribes into the villages, and as a school of civilization, either to the wild natives or to those under the care of the missions, who, during the long time they have been submitted, have not been useful members of society, as your petitioner at this time has the satisfaction that they are, which is due to his indefatigable exertions: for all these reasons, he finds himself under the necessity of enlarging his enterprise by establishing twelve families, and to solicit the kindness of your excellency, that you may be pleased to grant him eleven leagues of land in his establishment called "La New Helvetia," (New Helvetia,) situated towards the north according to the land represented in the sketch, which he has the honor to present to your excellency. The land which is periodically overflown in winter is not comprised in the aforesaid eleven leagues. Your petitioner protests to your excellency, and to the Mexican nation, that he shall keep faithful the laws of colonization in force, and all those about the matter; therefore he supplicates your excellency, that, exercising the power vested in you, you will be pleased to grant him his petition, and to interfere at the same time your powerful influence before the supreme government of the nation, that its superior approbation may be obtained. Your petitioner will receive a favor and benefit, and the country will improve its agriculture.

Monterey, June 15th, 1841.

Excellent Sir,

(Signed) JOHN A. SUTTER.

Title.

Whereas Don Augusto Sutter, a native of the Swiss republic, and naturalized in the Mexican nation, has solicited, according to the law of 18th August, 1824, and the ordinance of the 21st November, 1828, for his personal benefit, and that of twelve families, eleven leagues of land on the borders of the river Sacramento, in the vacant lands of the northern frontier, in order to colonize and foster them, for which end he has sufficiently proved his assiduity, good behavior and all other quali-

ties required in those cases, having already anticipated his increased efforts, his constant firmness and his truly patriotic zeal in favor of our institutions, having reduced to submission a number of savage Indians, born in those frontiers, and this government being sufficiently informed that the mentioned land does not belong to the property of any private individual, town or corporation, and that, in consequence thereof, it is specified in the aforesaid laws, and in conformity with the power conferred on me, in the name of the Mexican nation, I have granted to the said Senor Don Augusto Sutter, by these present letters, for him and his settlers, the said land called La Nueva Elvecia, (New Helvetia,) subject to the approval or disapproval of the supreme government, and of the excellent departmental assembly, under the following conditions:

1st. He may fence it without injury to the crossings, roads and servitudes, and above all to the trade and navigation of the rivers.

2d. He shall maintain the native Indians of the different tribes on those places in the free enjoyment of their possessions without troubling them, and he may only reduce them to civilization through prudent measures and a friendly intercourse; he shall not cause them hostilities of any kind without previously obtaining authority from government.

3d. The land of which donation is made to him is of the extent of eleven sitios de ganado mayor, (eleven square leagues,) as exhibited in the sketch annexed to the proceedings, without including the lands overflown by the swelling and current of the rivers. It is bounded on the north by Las Tres Picas, (the Three Summits,) and the 39° 41′ 45″ north latitude; on the east by the borders of the "Rio de las Plumas," (Feather river;) on the south by the parallel of 38° 49′ 32″ of north latitude, and on the west by the river Sacramento.

4th. When this property shall be confirmed unto him, he shall petition the proper judge to give him the possession of the land, in order that it may be measured, agreeably to ordinance, the surplus thereof remaining for the benefit of the nation, for convenient purposes.

Therefore I order that, this title being held as firm and valid, the same be entered in the proper book, and that these proceedings be transmitted to the exc't the departmental assembly.

Thus I, John B. Alvarado, commandant general of the department of the Californias, have ordered and signed, to which I certify.

E. C.
R. P.

MONTEREY, *June 18th*, 1841.

I certify the foregoing to be a true and correct translation of the foregoing Spanish documents, filed in this office, in case No. 92, John A. Sutter.

GEO. FISHER, *Sec'y.*

Filed in office March 8th, 1852.

GEO. FISHER, *Sec'y.*

Translation of Title.—"C."

Manuel Micheltorena, Brigadier General of the Mexican Army, Adjutant Gen'l of the Staff, Governor General-in-chief and Inspector General of the Department of the Californias.

Whereas Don Juan Augustus Sutter, a Mexican naturalized citizen, and his son, John A. Sutter, have solicited for the personal benefit of themselves and family the surplus of land within his rancho, named New Helvetia, as laid down in the map which accompanies the grant, and the usual investigations and inquiries in relation thereto, by law and regulations, having been complied with, by virtue of the authority conferred upon me, in the name of the Mexican nation and for the good conduct and services which the said Sutter has rendered and is rendering at the present time, I have conceded to them the mentioned land, declaring in them the ownership thereof by these presents, subject to the approval of the most exc't the assembly department, under the following conditions:

1st. They may enclose it, without interfering with the paths, roads and servitudes. They shall enjoy it exclusively and freely, appropriating it to the uses of cultivation which suits their convenience.

2d. They can request the proper juez that he give them lawful possession by virtue of this decree, so that the boundaries may be defined, at the limits of which there may be placed beside the landmarks some fruit trees, or useful kind of forest trees.

3d. The land of which mention is made consists of twenty-two square leagues, described upon the map which accompanies this grant.

4th. The juez who gives the possession shall have the land surveyed according to law, remaining the surplus that may result at the disposal of the nation, for its convenient uses.

5th. Therefore I command, that these presents investing the title in them, and holding the same as firm and valid, shall be handed in for record in the proper books, and shall be delivered to the parties in interest for the security and other purposes.

Executed on this ordinary paper, having no stamped paper appropriate.

Santa Barbara, February 5th, 1845.

MANUEL MICHELTORENA.

, *Sec'y ad interim*.

I certify the foregoing to be a true and correct translation from the foregoing Spanish document, filed in this office, in case No. 92, John A. Sutter.

GEO. FISHER, *Sec'y*.

Filed in office March 8th, 1852.

GEO. FISHER, *Sec'y*.

Translation of Exhibit O.

A. P. L. Exhibit to the Deposition of Henry L. Ford.—March 12th, 1855.

To his Excellency the Governor:

The citizen Wm. A. Leidsdorff, a native of Denarmarca, and naturalized in the republic of Mexico, presents himself before your excellency with all submission and respect, and says: That, possessing a great number of cattle, and being desirous to own a place on which to raise them, he has found one vacant, adjoining the lands of Captain Sutter, as shown in the map attached, which he respectfully presents herewith. The said land is on the bank of the American river, and is four leagues in length towards the east and two leagues in width towards the south. Wherefore he beseeches your exc'y to grant him said land, whereby he will receive reward and favor, swearing, &c., &c.

Monterey, August 29th, 1844.

GUILLERMO A. LEIDSDORFF.

(*Written in the margin.*)

MONTEREY, *Aug. 29th*, 1844.

Let the secretary of the office report, after taking the necessary steps. MICHELTORENA.

As directed by his excellency the governor, Capt. Sutter will please report upon the contents of the foregoing application.

MANUEL JIMENO.

Monterey, same date.

To his Excellency the Governor:

The land solicited is vacant, as appears from the annexed certificate, and so well marked out on the map, and in a situation so near the place of Capt. Sutter, that I think there is no objection to your excellency granting the land to the applicant, if your excellency does not wish to direct otherwise. MANUEL JIMENO.

Monterey, Oct. 1st, 1844.

Same date.—Granted. MICHELTORENA.

MONTEREY, *Oct. 8th*, 1844.

In view of the petition with which this expediente begins, the reports which precede, and all else present and proper to be considered, in conformity to the laws and regulations on the subject, I declare William A. Leidsdorff, by these presents, owner in property of the land situated on the banks of the American river, bounded by the land granted to the colony of Capt. Sutter and by the hills on the east, in extent eight leagues, "de ganado mayor." Let the corresponding decree be issued and recorded in the proper book, and the expediente referred to the most excellent departmental assembly, for its approval. His excellency, Manuel Micheltorena, brigadier general of the Mexican

army, adjutant general of the staff of the same, governor, commanding gen'l and inspector of the department of the Californias, thus ordered, decreed, and signed, as I certify.

Jurisdiction of the river Sacramento.

The land solicited in this application by Wm. A. Liedsdorff, situated on the American river, is now unoccupied, and is the land represented on this map; and I give this certificate for the purposes for which it may be required.

JOHN A. SUTTER.

New Helvetia, Aug. 4th, 1844.

Seal First—Eight Dollars.

Furnished provisionally by the custom-house of the port of Monterey, in the department of the Californias, for the years 1844 and 1845.

PABLO DE LA GUERRA,
In the absence of the adm't,
WILLIAM EDW'D HARTNELL.

MICHELTORENA.

The citizen Manuel Micheltorena, Brigadier Gen'l of the Mexican army, Adjutant Gen'l of the same, Governor, Commanding Gen'l and Inspector of the Department of the Californias:

Whereas William A. Leidsdorff, a Mexican by naturalization, has solicited for his personal benefit six leagues "de ganado mayor," on the banks of the river called the American river, bounded by the land granted to the colony of Mr. Sutter, and by the hills to the east, having first *taking* the proceedings and made the inquiries according to what is directed by the laws and regulations on the subject, exercising the powers which are conferred on me in the name of the Mexican nation, I have granted him the said land, subject to the approval of the ex't departmental assembly, and to the following conditions:

1st. He shall not have power to sell, alienate, nor mortgage it; to impose on it any entail or other charge, nor to give it away.

2d. He shall not hinder the cultivation or other improvements of said land made by the Indians of that region.

3d. He shall have power to enclose it, without injury to the crossings, roads, and servitudes. He shall enjoy it freely, cultivating it as may best suit him; but within one year he shall build a house, and it shall be inhabited.

4th. The land of which donation is made is of the extent already mentioned. The judge who shall give the possession shall have it measured in conformity to the ordinance, leaving the surplus which remains to the nation for the proper uses.

5th. If he should violate these conditions he shall lose his right to the land, and it shall be denounced by another. Wherefore I order

that present title, being held firm and valid, be recorded in the proper book, and be delivered to the party interested for his protection and other purposes.

Given at Monterey, the 8th of October, 1844.

MANUEL MICHELTORENA.
MANUEL JIMENO, *Sec'y.*

This deed is recorded in the proper book, page 11.

JIMENO.

Filed in office September 30th, 1853.

GEO. FISHER, *Sec'y.*

W.—Annexed to the depo. of Joseph Clough, taken before the Board July 18, 1854.

Mexican Government to J. A. Sutter:

Grant.

Sello 1o, Seis Pesos.

Habilitado provisionalmente por la aduana maritima de Monterey, para los años de 1839 y 1840.

ALVARADO. ANTONIO MARIA OSIO.

Valga por los años de 1841 y 1842.

ALVARADO. ANTONIO MARIA OSIO.

[SEAL.]

Juan B. Alvarado, Gobernador constitutional del Departamento de las Californias.

Por Cuanto Dn. Augusto Sutter, natural de la Republica Suisa, y naturalizado en la nacion ha pretendido conforme a la ley de 18 de Agosto, de 1824, y al reglamento de 21 de Noviembre, de 1828, para su beneficio personal y el de doce familias once leguas de tierras en las manjanes del rio del Sacramento en los terrenos baldios de la frontera del norte, para colonizar los y formentar los en los terminos referidos en las disposiciones mencionadas, para cuyo fin ha acreditado sujececestemente su laboriosidad buena conducta y demas cualidades que son requeridas en estos casos teniendo ya anticipados sus enecidas esfuerzas, su constante empeño y celo bendaderamente patriotica en favor de nuestros, reduciendo a la civilidad una poicion de judios salvages naturales de aquellas frontera é inprimado suficientemente esto gobierno de que los terrenos mencionados no pretencion a la propiedad particular de ningun individuo, pueblo, ó corporacion, y se hall'an por consiguiente en las clasificadas en las leyes y conforme a las facultades que me son conferidas en nombre de la nacion Mejicana he venido en concederle al mencionado Sr. Dn. Augusto Sutter por las presentes letras para si y sus coloniradores el terreno referido con el nombre de la Nueva Elvesia, sujetandose a la aprobacion ó disaprobacion del gobierno supremo y de la ex'mo junta departamental bajo de las condiciones siguientes.

1a. Podra sercarlo sin prejudicar las travesias caminos y servidumbres, principalmente el trafico y nabegacion de los rios.

2a. Mantendra a los naturales indigenos de las difirentes tribas de aquellos puntos en el goce y libertad de sus fuciones sin molestar los y solo podra reducirlos a la civilization por los medios de su prudencia y de las relaciones amistosas sin hostilizarlos en manera alguna antes de no obtenir las facultades del gob'no.

3a. El terreno de que se hace donacion es de once sitios de ganado mayor comprendidos en la estension que demarca el diseño que corre agregado al espediente sin incluir las tierras anegados por el impulso y las corrientes de los rios, siendo sus linderos por la parte del norte los Tres Picos, y la latitud 39 41 45 norte al este las marigenes del Rio de las Plumas al sur latitude 38 49 32 norte al oeste el Rio del Sacramento.

4o. Cuando se le confirme esta propiedad solicitara del juez respectivo la posecion del terreno para que sea medido conforme a ordenenza que dando el sobrante que resulté a beneficio de la nacion para los usos que le convengan. En consecuencia mando que teniendose por firme y valedero este titulo se tome razon de el en el libro a que corresponde y se entreque al interesado para su resguardo y demas fines.

Dado en Monterey, a diez y ocho de Junio, de mil ocho cientos cuarenta y uno.

JUAN B. ALVARADO.
MANUEL JIMENO, *S'rio.*

Queda tomada razon de este despacho en el libro de acientos sobre adjudicaciones de terrenos baldios a $4 va.

JIMENO.

Recorded Feb'ry 6, 1851, 3½ o'c. p. m.
S. A. BIRDSALL, *Recorder.*

STATE OF CALIFORNIA, *County of Sacramento.*

I, John L. Craig, recorder in and for said county, do hereby certify the foregoing to be a full, true and correct copy of an instrument of writing from Juan B. Alvarado to Augusto Sutter, as recorded in book F of Deeds, pages 320, 321, and 322 of the records of Sacramento county, at present in my office.

In testimony whereof I have hereunto set my hand and affixed my official seal this 13th day of June, A. D. 1854.

JNO. L. CRAIG, *Co. Recorder.*
M. JEROME MADDEN, *Dpy. R.*

Filed in office July 18, 1854.

GEO. FISHER, *Sec'y.*

Translation of W.—Annexed to depo. of Jos. Clough.

Stamp 1st, Six Dollars.

Provisionally authorized by the maritime custom-house of Monterey for the years 1839 and 1840.

ANTONIO MA. OSIO.

ALVARADO.

Valid for the years 1841 and 1842.

ANTONIO MA. OSIO.

ALVARADO.
[SEAL.]

Juan V. Alvarado, Constitutional Governor of the Department of the Californias.

Whereas Dn. Augusto Sutter, a native of the Swiss republic, and naturalized in the Mexican nation, has solicited, according to the law of 18th of August, 1824, and the ordinance of 21st of November, 1828, for his personal benefit, and that of twelve families, eleven leagues of land on the borders of the river Sacramento, in the vacant lands of the northern frontier, in order to colonize and foster them, as required in said regulations, for which end he has sufficiently proved his assiduity, good behavior, and all other qualities required in these cases, having already anticipated his great efforts, his constant firmness, and his truly patriotic zeal, in favor of our institutions, having reduced to submission a number of savage Indians born in these frontiers, and this government being sufficiently informed that the mentioned land does not belong to the property of any private individual, town or corporation, and that, in consequence thereof, it is specified in the aforesaid laws; and in conformity with the powers conferred on me, in the name of the Mexican nation, I have granted to the said Senor Don Augusto Sutter by these presents, for him and his settlers, the said land called La Nueva Helvecia, (New Helvetia,) subject to the approval or disapproval of the supreme government, and of the most excellent departmental assembly, under the following conditions:

1st. He may fence it without injury to the crossings, roads and servitudes, and, above all, to the trade and navigation of the rivers.

2d. He shall maintain the Indians of the different tribes on those places in the free enjoyment of their possessions without troubling them, and he may only reduce them to colonization through prudent measures and a friendly intercourse; he shall not cause them hostilities of any kind without previously obtaining authority from government.

3d. The land of which donation is made to him is of the extent of eleven sitios de ganado mayor, (eleven square leagues,) as exhibited in the sketch annexed to the espediente, without including the lands overflowed by the swelling and current of the rivers. It is bounded on the north by (los Tres Picos) the Three Summits and the 29° 41′ 45″ north latitude; on the east by the borders of the (Rio de las Plumas) Feather river; on the south by the parallel of 38° 49′ 32″ of north latitude, and on the west by the river Sacramento.

4th. When this property is confirmed unto him, he shall petition the proper judge to give him the possession of the land in order that it may be measured agreeably to ordinance, the surplus thereof remaining for the benefit of the nation for convenient purposes.

Therefore I order that, this title being held firm and valid, the same be entered in the respective book, and that it be delivered to the party interested, for his security and other purposes.

Given in Monterey on the eighteenth day of June, eighteen hundred and forty-one.

JUAN B. ALVARADO.
MANUEL JIMENO, *Sec'y.*

I certify the foregoing to be a true translation of document W., annexed to the deposition of Joseph Clough, taken before the board July 18, 1854, filed July 18, 1854.

In witness whereof I have hereunto signed my name at office.

GEO. FISHER, *Sec'y.*

Filed in office July 18, 1854.

GEO. FISHER, *Sec'y.*

Deed—John A. Sutter to John A. Sutter, Jr.

Know all men by these presents, that I, John A. Sutter, of New Helvetia, in the Territory of Upper California, for and in consideration of fifty thousand dollars, good and lawful money of the United States of America, to me in hand paid by John A. Sutter, jr., of the same place, the receipt whereof is hereby acknowledged and confessed, and also in consideration of natural love and affection, have granted, bargained, sold, transferred, and set over, and by the presents do grant, bargain, sell, assign, transfer, and set over, unto the said John A. Sutter, jr., his heirs, executors, administrators, and assigns, all the following described real estate and chattels, together with all the appurtenances, *herdiliments*, improvements, settlements, thereto belonging, and bounded and described as follows, to wit: All that lot, piece, tract, or parcel of land, situate, lying and being in the said Territory of Upper California, commencing on the north latitude 39° 33′ 45″, at a point on the east bank of the Rio de Sacramento at said latitude, running thence east to the Rio de las Plumas, and three leagues to the east, beyond said river; thence south to latitude 38° 41′ 32″; thence west to the Rio de Sacramento; thence in a northwesterly direction, up and along the course of said river Sacramento to its intersection with the said Rio de las Plumas; thence in westerly direction, up and along the course of the Rio de Sacramento to the place of beginning, containing about eleven (11) leagues of land, to be the same more or less, excepting and reserving out of said mentioned tract of land a certain piece or parcel of land, situate, lying and being east of the said Rio de Sacramento, and bounded on the north by latitude 39° 1′ 45″, and on the south by the Rio de los American, and granted by the republic of Mexico to one Elias Grimes. For a more particular description of the above mentioned property, reference is hereto made to a certain map of said premises, surveyed and made by John Jacob Vioget, and now in the archives of the government of the said Territory of Upper California, and also to two certain grants of the said John A. Sutter, of said described premises, dated *respectfully*, the one on the eighteenth day of June, in the year one thousand eight hundred and forty-one, and the other in or about the month of November, in the year one

thousand eight hundred and forty-four; and also, all that certain lot, piece, parcel or tract of land, situate, lying, and being in the said Territory of Upper California, known and distinguished as "Fort Ross," together with all the real estate, lands, tenements, and chattels real, thereto belonging, and in any wise appertaining to said real estate, containing about six leagues of land, be the same more or less; and also all that certain tract, piece or parcel of land, situate, lying, and being on the river known as the (South Fork,) together with the saw-mill, and other buildings thereon standing, and the fixtures belonging and appertaining thereto, containing about six hundred and forty (640) acres of land in one square mile; and also a certain other lot, piece, parcel or tract of land, situate and lying in the town of San Francisco, in said Territory of Upper California, adjoining the premises of the late William A. Leidsdorff and one John McKinstry: to have and to hold the above mentioned real estate, lands, tenements and chattels real, together with all and singular the hereditaments and appurtenances thereunto belonging, and in anywise appertaining to the same, unto the said John A. Sutter, jr., his heirs, executors, administrators, and assigns forever.

In witness whereof, I have hereunto set my hand and seal this fourteenth day of October, in the year of our Lord one thousand eight hundred and forty-eight.

JOHN A. SUTTER. [SEAL.]

In presence of—
MYRON NORTON,
T. R. PERSEL.

STATE OF CALIFORNIA,
County of San Francisco, ss.

On this first day of June, A. D. 1850, before me, a notary public in and for said county, appeared Myron Norton, personally known to me to be the person whose name is subscribed to the foregoing conveyance as a witness thereto, who being by me duly sworn, did depose and say, that John A. Sutter, the person whose name is subscribed to such conveyance, is the person who executed the same in the presence of deponent, and that deponent subscribed his name to such conveyance as a witness thereof.

Given under my hand and seal of office.

[Notarial Seal.]

JOHN McVICAR,
Notary Public San Francisco County.

The following described real estate is excepted and reserved out of the property conveyed by the foregoing deeds from John A. Sutter to John A. Sutter, junior, said real estate having heretofore been conveyed by deeds from said John A. Sutter to the grantees hereafter named, respectively, to wit: Three miles square of land lying on the Yuba river, conveyed to one John Smith some time in the year 1844; also one mile and a half of land lying on said river conveyed

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to one Michael Nye some time in the year 1844; also one mile of land lying Feather river, conveyed to one Nicholas Allgunn some time in the year 1840; also one mile of land lying on said river, conveyed to one Edward Farwell some time in the year 1844, and adjoining the said land of Nicholas Allgunn; and also one half mile of land lying in Sutterville, and conveyed to one Lamford W. Hastings some time in the year 1845; and the said John A. Sutter, jr. hereby releases all right, title, and claim to all and to every part of the said parcels of land which he may have acquired by virtue of the foregoing deed.

In witness whereof the said parties have interchangeably set their hands and seals this eighteenth day of November, one thousand eight hundred and forty-eight.

JOHN A. SUTTER, [SEAL.]
JOHN A. SUTTER, Jr. [SEAL.]

In presence of—
MYRON NORTON,
T. R. Pr. LEE.

STATE OF CALIFORNIA,
County of San Francisco, ss.

On the first day of June, A. D. 1850, appeared before me, a notary public in and for said county, Wyram Norton, personally known to me to be the person whose name is subscribed to the within conveyance as a witness thereto, who being by me duly sworn, did depose and say, that John A. Sutter and John A. Sutter, jr., whose names are subscribed to such conveyance, are the persons who executed the same in the presence of deponent, and that deponent subscribed his name to such conveyance as a witness thereto.

Witness my hand and seal of office.

[Notarial Seal.]

JOHN McVICAR,
Notary Public San Francisco County.

Recorded June 3d, 1850, at 4 $\frac{30}{60}$ p. m.
THO'S JALY, *Dept. Recorder.*

I hereby certify, that the foregoing is a true, correct and faithful copy of deed from John A. Sutter to John A. Sutter, jr., as recorded in book C of Deeds, pages 351, 352, 353, in my office.

Witness my hand and official seal this twentieth day of October, A. D. 1851.

JOHN L. CRAIG,
Recorder Sacramento County.

By W. J. REELY, *Deputy R.*

Filed in office Nov. 4th, 1853.

GEO. FISHER, *Sec'y.*

Deed from John A. Sutter, jr., to John A. Sutter.

John A. Sutter, jr., to John A. Sutter—Deed.

This indenture made this twenty-fifth day of June, in the year of our Lord one thousand eight hundred and forty-nine, between John Sutter, jr., of the first part, and John Augustus Sutter, of Hock Farm, on Feather river, in Upper California, of the second part, witnesseth: That the said of the first part, for and in consideration of the sum of fifty thousand dollars, to him in hand paid by the said party of the second part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath given, granted, bargained, sold, aliened, released, and by these present doth give, grant, bargain, sell, and release unto him, the said party of the second part, all that tract and parcel of land situate and being in Upper California, which is contained in the following boundaries, that is to say: Beginning on the eastern bank of Sacramento river, in latitude 39° 33′ 45″ north; thence east along the same circle of latitude to Feather river, and continuing in the same line to the distance of three leagues from the eastern bank of Feather river; thence in a southerly direction in a line parallel to the eastern bank of Feather river, and continuing three leagues distant therefrom to the circle of latitude which passes through the mouth of Feather river; thence west along the said circle of latitude two leagues; thence southerly in a parallel to the eastern bank of the Sacramento river, and one league distant therefrom to the river called the American Fork; thence along the north bank of the American Fork in a westerly direction to the junction of said river with the Sacramento; thence over to the south bank of the American Fork at the said junction; thence along the southern bank of the American Fork in an easterly direction to the western boundary line of a tract of land known as Leidsdorff's ranch; thence south to the circle of latitude which lies 38° 41′ 32″ north; thence west along the said circle of latitude to the Sacramento river; thence along the said Sacramento to the place of beginning, saving and excepting out of the aforesaid tract of land the following lots and parcels of land, to wit: Any and all lots of land lying and being within the aforedescribed boundaries, which the said party of the first *party of the first* part may have granted and conveyed by deeds bearing dates anterior to that of these presents; and also all those tracts or parcels of land which were excepted from a grant of land made by the said party of the second part to the party of the first part by deed bearing date the 14th day of October, in the year one thousand eight hundred and forty-eight, reference being hereby made to the land records of Sacramento city, where the said deed is recorded, for the more full exemplification thereof; and also all that tract of land situated on the Sacramento river, beginning at a point on the east bank of said river, adjoining the land owned by Geo. McKinstry, running thence up the said river bank along the low-water line one half mile; thence in a direct line back from said river one mile; thence in a line parallel with the aforesaid river line southerly one half mile; thence to the place of beginning. This last

excepted and reserved land being meant and intended precisely to include and cover that lot and parcel of land which is claimed by Malan D. Winship by virtue of a quit-claim deed, made by the party of the second part hereto on or about the fifth of April, in the year eighteen hundred and forty-nine; and if the boundaries as above set forth do not include the said land pretended or attempted to be conveyed to the said Winship by the deed aforesaid, then the party of the first part hereby expressly excepts and reserves from the land hereby conveyed, or intended to be conveyed, all the land on Sacramento river called for and specified in the deed made as aforesaid by the said party of the second part to the said Malan D. Winship, the same hereby conveyed, or intended to be conveyed, land and premises, being the land and premises which were conveyed by the said John A. Sutter, of Hock, to his son, the said John A. Sutter, jr., party of the first part hereto, by a deed, to which reference was herein above made, and none other land whatever. To have and to hold the aforesaid tract of land, together with all the rights, privileges, appurtenances, and water rights to the same in anywise appertaining, unto him the said John A. Sutter, party of the second part, his heirs and assigns, to and for the sale, use, and behoof of him and them forever, and none other whatever.

In witness whereof, the said John A. Sutter, jr., party of the first part, hath hereunto set his hand, and affixed his seal, on this the day and year herein before mentioned.

JOHN A. SUTTER, JR. [SEAL.]

Signed, sealed, and delivered in presence of—
ARCHIBALD C. PEACHY,
HARVEY A. SCHOOLCRAFT.

TERRITORY OF CALIFORNIA,
District of Sacramento, ss.

Be it remembered, that on this 25th day of June, A. D. 1849, before me came John A. Sutter, jr., personally known to me to be the person whose name appears signed to the foregoing deed as having executed the same, and acknowledged his said signature to be genuine, and the said instrument to be his free act and deed, for the purpose therein mentioned.

Given under my hand and seal the day and year aforesaid.

HENRY A. SCHOOLCRAFT,
First Magistrate, Sacramento, Cal'a.

Transcribed June 17th, 1850, at 11 o'c. a. m., from book "A" of Schoolcraft's Records, page 71.

THOS. J. ABY, *Dept. Recorder.*

I hereby certify, that the foregoing is a true, correct, and faithful copy of deed from John A. Sutter, jr., to John Augustus Sutter, as recorded in book "C" of Deeds, pages 411 and 412, records of Sacramento county.

Witness my hand and official seal, this twentieth day of October, A. D. 1853.

JOHN L. CRAIG,
Recorder of Sac. Co.

Filed in office Nov. 4th, 1853.

GEO. FISHER, *Sec'y.*

John A. Sutter and wife to John Fowler et al.—H. Y. Z. No. 2.

Whereas I, John A. Sutter, of Hock Farm, Sutter county, State of California, party of the first part, have been for many years in possession of all that tract or body of land situate and lying and being in the State of California, and within the following boundaries, to wit:

Commencing on the north of the Three Peaks, or what is commonly called Sutter's Buttes, at a point on the east bank of Sacramento river, in latitude 39° 41′ 45″; thence running with the parallel of said latitude to the "Rio de las Plumas" or Feather river; thence down and along the meanders of said "Rio de las Plumas" or Feather river to its junction with Sacramento river; thence up and along the eastern bank of said Sacramento river to the place or point of beginning; and which said land embraced in a grant from the Mexican government, bearing date Monterey, 18th day of June, eighteen hundred and forty-one; and whereas, notwithstanding his possession of said land and his grant thereof, various persons have, from time to time, intruded thereon, and are continuing to do so, and taking possession of various portions thereof and asserting a claim thereto to the great annoyance and injury of the said John A. Sutter; and whereas the said John A. Sutter is anxious to be released from the troubles, expense, and vexation of maintaining his lawful right *the* the land aforesaid; and whereas Henry E. Robinson, John S. Fowler, Eugene F. Gillespie, and John McDougal, parties of the second part, are willing to accept his said title and to assume upon themselves the labor, expense, and trouble of maintaining the lawful right and title of the said John A. Sutter to the aforesaid tract of land, of preserving and securing it against all intruders and all persons whatsoever; and whereas, as a further consideration of this conveyance, the said parties of the second part agree and hereby bind themselves to pay over to the said John A. Sutter one-sixth part of the net proceeds of the said tract or parcel of land aforesaid, (with the reservation hereafter to be stated,) when and as the same may be from time to time sold; and whereas, also, Ann Sutter, the wife of the said John A. Sutter, is willing to become a party to this conveyance, and by it relinquishes all the right, title, and interest in and to the said tract or parcel of land before described, expressly upon the condition, and none other, that the said parties of the second part shall convey to her, the said Ann Sutter, such title as they may acquire by this deed, to her sole, separate, and exclusive use forever, all that portion of the said tract or parcel of land known as "Hock Farm," lying and being on Feather river, and fronting on the west side thereof, running the dis-

tance of six miles along and on said river, and four miles back therefrom, &c., &c.; a more full description of which will appear by a reference to a deed this day executed to her, the said Ann Sutter, by the parties of the second part; and whereas the said parties of the second part, in further consideration for this deed, have also agreed to pay, at or before the sealing and delivery of this deed, the sum of six thousand dollars, the receipt by the said John A. Sutter is hereby acknowledged:

Now, this indenture witnesseth, that for and in consideration of the premises above mentioned, I, John A. Sutter and Ann Sutter, his wife, of "Hock Farm," Sutter county, State of California, of the one part, have granted, bargained, sold, aliened, remised, released, and confirmed, and by these presents do fully and absolutely grant, bargain, sell, alien, remise, release, and confirm unto Henry E. Robinson, John S. Fowler, Eugene F. Gillispie, and John McDougall, parties of the second part, and their heirs and assigns forever, all that tract or lot of land as heretofore described, being the same as granted by the Mexican government, bearing date on the 18th day June, eighteen hundred and forty-one, ly on Feather and Sacramento rivers, together with all and singular the hereditaments and appurtenances to the said tract or parcel of land and premises belonging, and in any wise appertaining, together with all the stock, utensils, and other things belonging on said tract or parcel of land, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and for every part and parcel thereof, and also all the estate, right, title, and interest, property, possession, claim, and demand whatsoever, of the said parties of the first part, and each of them, of, and in, and to the same, or any part or parcel thereof; and the said John A. Sutter and Ann, his wife, do hereby convey, grant, and assign unto the parties of the second part, whatever right, title, and interest they may have in any part other tracts or parcels of land which they may have or possess in the State of California; but the said John A. Sutter excepts and reserves from this conveyance such parts and parcels of land as has been granted or sold heretofore by him, and for which he has executed his deeds, which were for valuable considerations, and which has been paid to him, and which deeds have been duly and properly recorded: to have and to hold the said tract or parcel of land and premises, and all interests in other lands hereby conveyed, with all their rights, members, and appurtenances unto the said party of the second part, their heirs and assigns forever, to the only proper use and behoof of the parties of the second part, their heirs and assigns forever.

In testimony whereof, the said parties of the first part, and parties of the second part, have hereto set their hands and affixed their seals on

this first day of July, in the year of our Lord one thousand eight hundred and fifty.

JOHN A. SUTTER, [L.]
A. SUTTER, ne dubela, [L.]
HENRY E. ROBINSON, [L.]
JOHN S. FOWLER, [L.]
EUGENE GILLISPIE, [L.]
JOHN McDOUGAL. [L.]

Signed, sealed, and delivered in presence of—
C. B. ZABRISKIE,
J. C. ZABRISKIE, for the signature of
JOHN A. SUTTER,
HENRY E. ROBINSON,
JOHN S. FOWLER,
JOHN McDOUGAL.

Witness on the part of Ann Sutter—
G. W. LAWRENCE,
WM. W. WARNER.

STATE OF CALIFORNIA,
County of Sacramento, ss.

I hereby certify, that on this first day of July, A. D. 1850, personally appeared before me, a notary public in and for said county, John A. Sutter, H. E. Robinson, John S. Fowler, Eugene F. Gillispie, and John McDougal, known to me to be the persons described in, and who executed the annexed conveyance, and acknowledged that they executed the same freely and voluntarily for the purposes and uses thereon mentioned.

Witness my hand and notarial seal, this the day and year aforesaid.

WM. S. JACKSON, [SEAL.]
Notary Public.

STATE OF CALIFORNIA,
County of Sutter, ss.

On this the 8th day of July, A. D. 1850, personally appeared before me, a deputy recorder in and for the said county, John A. Sutter, known to me to be the person described in, and who executed the annexed conveyance, and acknowledged the same to be his free and voluntary act for the uses and purposes therein mentioned.

In testimony whereof, I hereunto affix my name and seal, the day and date aforesaid.

G. W. LAWRENCE,
Dep't Recorder for Sutter County.

The official seal not executed. G. W. L.

STATE OF CALIFORNIA,
County of Sutter, ss.

On this the 8th day of July, A. D. 1850, personally appeared before me, a dept. recorder in and for the said county, Ann Sutter, wife

of John A. Sutter, known to me to be the person whose name is subscribed to the annexed conveyance as a party thereto, and being examined by me, privately and apart from her husband, and having the contents of said conveyance fully explained to her, she acknowledged that she executed the same freely and voluntarily, without fear or compulsion or under influence of her husband; that she did not wish to retract the execution of the same.

In testimony whereof I hereunto set my hand and affix my private* seal, (as yet no official seal provided,) the day and date aforesaid.

G. W. LAWRENCE,
Deputy Recorder for Sutter County.

*The official seal not yet executed.

Recorded July 11th, A. D. 1850, at 2.40 o'c. p. m.

THOS. J. ALY,
Deputy Recorder.

STATE OF CALIFORNIA,
County of Sacramento, ss.

I hereby certify that the above and the foregoing is a full, true, and correct copy of deed from John A. Sutter and wife to Henry E. Robinson, John S. Fowler, Eugene F. Gillispie, and John McDougall, as recorded in book "D" of Deeds, pages 268, 269, 270, and 271, records of Sacramento county. The words "to time," on the 14th line, interlined in copy, but not in original.

In testimony whereof I hereunto subscribe my name and affix my seal of office, at Sacramento city, this nineteenth day of April, A. D. 1851.

JOHN L. CRAIG,
Recorder Sacramento County.

Filed in office April 22d, 1854.

GEO. FISHER, *Sec'y.*

John A. Sutter and Wife to John S. Fowler, &c.—Deed—X. Y. Z. No. 1.

This indenture, made and entered into this 11th day of June, in the year one thousand eight hundred and fifty, between John A. Sutter and Ann, his wife, of Hock Farm, in the county of Sutter and State of California, of the first part, and Henry E. Robinson, John S. Fowler, and Eugene F. Gillespie, of Sacramento city, in the State aforesaid, of the second part, witnesseth:

That the said John A. Sutter and Ann, his wife, for and in consideration of the sum of fifteen thousand dollars, lawful money of the United States, to them in hand paid by the said parties of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, aliened, released, and conveyed, and by these presents do grant, bargain, and sell, alien, release, and convey unto the said Henry

E. Robinson, Jno. S. Fowler, and Eugene F. Gillispie, their heirs and assigns forever, all of their right, title, and interest whatsoever, whether at law or in equity, of, in, and to that certain tract or parcel of land lying on the east side of the Sacramento river, commencing on the south at the intersection of said river and the American river; thence running northward, and following the meanderings of said Sacramento river, to the tract on said river embraced in the limits of what is known as the city of Vernon; thence easterly in a line running at right angles with the general course of said river one league; thence southwardly on a line running parallel with, and equal distance from, the course and meanderings of said river, until it intersects the American river; thence with said river and its meanderings to the place of beginning; containing, say five square leagues, more or less; it being intended by these presents to convey all the interests of the said parties of the first part, of, in, and to the aforesaid tract of land, notwithstanding the true boundaries of the same may extend beyond the eastern boundary as above defined, together with all the rights, privileges, hereditaments, and appurtenances thereunto belonging: to have and to hold the said tract of land and all the interests hereby conveyed unto the said Henry E. Robinson, Jno. S. Fowler, and Eugene F. Gillispie, to the only proper use and behoof of them and their heirs and assigns forever, and the said John A. Sutter, for himself, his heirs, executors, and administrators, the said tract of land hereby conveyed unto the said Henry E. Robinson, Jno. S. Fowler, and Eugene F. Gillispie, their heirs and assigns, against the claim or claims, demand or demands, of all and every person whatsoever, doth forever warrant and defend by these presents.

In testimony whereof said John A. Sutter and Ann, his wife, have hereunto set their hands and affixed their seals, the day and year first above written.

JOHN A. SUTTER.
ANN SUTTER ne dubela.

In presence of, as to John A. Sutter—
WILLIAM B. MCCRACKEN,
H. BIGELOW.
As to Ann Sutter, in presence of—
GABRIEL ZENKSKY,
B. F. WASHINGTON.

STATE OF CALIFORNIA,
County of Sacramento, ss.

I hereby certify that on this, the 20th day of June, A. D. 1850, personally appeared before me, a notary public in and for the county aforesaid, John A. Sutter, known to me to be the person described in and who executed the annexed conveyance, and acknowledged that he executed the same freely and voluntarily, for the purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my seal of office, the day and year aforesaid.

BENJ. F. WASHINGTON, [SEAL.]
Notary Public.

STATE OF CALIFORNIA,
County of Sacramento, ss.

I hereby certify that on this, the 20th day of June, A. D. 1850, personally appeared before me, a notary public in and for said county, Ann Sutter, known to me to be the person whose name is subscribed to the annexed conveyance as a party thereto, and being examined by me privately and apart from her husband, and having the contents of said conveyance fully explained to her, she acknowledged that she executed the same freely and voluntarily, without fear or compulsion or under influence of her husband, and that she did not wish to retract the execution of the same.

Given under my hand and notarial seal, this day and year aforesaid.

[SEAL.] BENJ. F. WASHINGTON,
Notary Public.

STATE OF CALIFORNIA,
County of Sutter, ss.

On this 8th day of July, A. D. 1850, personally appeared before me, a dep't recorder in and for the county aforesaid, Ann Sutter, (wife of John A. Sutter,) known to me to be the person whose name is subscribed to the within conveyance as a party thereto, and being examined by me privately and apart from her husband, and having the contents of said conveyance fully explained to her, she acknowledged that she executed the same freely and voluntarily, without fear or compulsion or under influence of her husband, and that she did not wish to retract the execution of the same.

In testimony whereof I hereunto set my hand and affix my private seal, the day and year aforesaid.

G. W. LAWRENCE,
Dep't Recorder for Sutter County.

This acknowledgment recorded July 23d, 1850, at 6 p. m.

THOS. J. ABY,
Dep't Recorder, Sacramento County, Cal.

STATE OF CALIFORNIA,
County of Sutter, ss.

On this the 8th day of July, A. D. 1850, personally appeared before me, a dep't recorder in and for said county, John A. Sutter, known to me to be the person described in and who executed the within instrument, and duly acknowledged the same to be his free and voluntary act, for the uses and purposes therein mentioned.

In testimony whereof I have hereunto affixed my name and private seal, the day and date aforesaid. G. W. LAWRENCE,
Dep't Recorder for Sutter County.

This acknowledgment recorded July 23d, A. D. 1850, at 6 o'clock, p. m.

THOS. J. ABY,
Dep't Recorder.

STATE OF CALIFORNIA,
County of Sacramento, ss.

I hereby certify that the within and foregoing is a full, true, and correct copy of deed from John A. Sutter and wife to Robinson, Fowler and Gillespie, as recorded in book D of Deeds, pages 189 and 190, records of Sacramento county.

In testimony whereof I hereunto set my hand and affix my seal of office, at Sacramento city, this nineteenth day of April, A. D. 1851.

JOHN CREIG,
Recorder Sacramento County.

Filed in office April 22d, 1854.

GEO. FISHER, *Sec'y.*

John A. Sutter to Elias Grimes, &c.—Exhibit "A A" to Depo. of Sam'l J. Hensley, in case No. 683.

Know all men by these presents, that I, John Augustus Sutter, of New Helvetia, a citizen of California, do agree, grant, and convey unto Elias Grimes, Hiram Grimes, and John Sinclair, their heirs, administrators and assigns, a certain piece or parcel of land situated in New Helvetia aforesaid, and described as follows, to wit: bounded by the river Sacramento, running northwestern to the mouth of Feather river; from thence in an easterly direction, meeting the said John A. Sutter's northeasterly boundary. The southern boundary commencing at the mouth of the river called the American Fork, said river being the southern boundary, running in an easterly direction, meeting the aforesaid Sutter's northeastern boundary: the said land is uncultivated, well wooded and watered; together with all the privileges and appurtenances to the said land in any wise appertaining and belonging: to have and to hold the above granted premises in the same manner as I now hold it from the Mexican Government, to the said Elias Grimes, Hiram Grimes, and John Sinclair, their heirs, administrators and assigns, to their use and behoof forever.

And I, the said John Augustus Sutter, for myself, my heirs, executors and administrators, do covenant with the said Elias Grimes, Hiram Grimes, and John Sinclair, their heirs and assigns, that I am lawfully seized in fee of the aforegranted premises, that they are free from all incumbrances, that I have good right to dispose and convey the same to the said Elias Grimes, Hiram Grimes, and John Sinclair, as aforesaid, and that I will, and my heirs, executors, and administrators shall warrant and defend the same to the said Elias Grimes, Hiram Grimes, and John Sinclair, their heirs and assigns, forever, against the lawful demands of all persons. It is understood and agreed that the northern boundary line commences at the mouth of the Feather river, and runs

due east to the said John Augustus Sutter's northeasterly boundary line; the distance being sixteen miles. The southern boundary line runs thirteen miles.

In testimony whereof, I, the said John A. Sutter, have hereunto set my hand and seal, this tenth day of August, in the year eighteen hundred and forty three.

JOHN A. SUTTER, [SEAL.]

Signed, sealed, and delivered in presence of us—
C. W. FLAGG,
SAM'L A. REYNOLDS.

The foregoing is a true and correct copy of a printed document, marked Exhibit "A A," annexed to the deposition of Sam'l J. Hensley, in case No. 683, wherein Hiram Grimes claims part of New Helvetia.

Witness my hand this 15th day of March, A. D. 1855.

GEO. FISHER, *Sec'y*.

Filed in office March 20th, 1855.

GEO. FISHER, *Sec'y*.

Motion and Affat. of J. H. Stover, to Intervene.

To the Honorable the members of the Board of Land Commissioners created to ascertain and settle the Private Land Claims in the State of California:

Your petitioner, Jacob H. Stover, states to this honorable board the following facts: that in the month of December of 1850, he settled upon a tract of land in Yuba county, lying east of Feather river, and, as your petitioner is informed, believing the same to be public lands belonging to the United States, and immediately went to improving the same, and still resides thereon, and have made improvements on said lands to the value of three thousand dollars, and that he believes the place to be worth to him, if the same turns out to be public lands, at least ten thousand dollars, and he avers that he believes it to be public lands, and that he in good faith so believed it when he settled, as above stated, and that he then and for a long time afterwards had not heard that the same was claimed by any private Mexican or Spanish grant.

Your petitioner further says, that while he had heard of a grant for eleven leagues to one Capt. John A. Sutter in that part of the country, yet that grant, by its own wording, as your petitioner is informed and believes, limited the said grant to the west of Feather river, and did not extend the same to the east thereof. This appeared among the public archives, when such grants were properly recorded; but your petitioner is now informed that the said Sutter, or at least those who claimed under him, pretend there was some mistake in the wording of the said grant, and have filed the same for confirmation before this board, and are seeking to alter the limits as prescribed on the face of said grant, by parol and other evidence, and claim now that it extends

east of said Feather river; and if they succeed in getting this board to confirm it to the extent claimed, it will cover and include the land so possessed and owned as before stated by your petitioner. He also has been informed and he believes, that said John A. Sutter and John A. Sutter, jr., his son, or those who claim under them, have lately filed another grant before this board for confirmation of twenty-two leagues, to be taken out of the vacant land remaining within the limits of the first named grant, and are proceeding also in this to show the mistake before alluded to; so that, if they get it so done, they will necessarily be enabled to take and locate several hundred farms and improvements already made by other citizens east of Feather river, and, as your petitioner upon information charge the same to be so, were made without the least knowledge of the existence of the last named grant, and also with the knowledge communicated by the face of the first grant, that it did not extend east of the said Feather river; and if they can thus extend the limits of these grants, they will be able to select many hundred farms and improvements of great value, made so by citizen settlers of the United States, who settled and improved said lands under the firm belief, as your petitioner believes in good faith, that they were United States lands, and with an honest intention not to settle or interfere with private rights. Your petitioner is informed and believes, that the last named grant was made to the said Capt. John A. Sutter and John A. Sutter, jr., his son, jointly, and that at the same time the said son was not a citizen of the Mexican republic, and as such could receive nor hold no grant of land by their laws, as that the same was void, so far as he is concerned; and he has also been informed that he is not now even a citizen of the United States. He is informed and believes the said Capt. John A. Sutter never performed the conditions required of him in the first named grant, and that those in the second are also not performed. He is also informed and believes, that in the boundaries actually called for by the first grant there are at least one hundred and fifty thousand acres of land subject to the calls of said grant, if the same should be held valid, ample to answer the calls of the second, if it should be held valid; and he believes he can show the foregoing facts, if he is allowed to define his rights in this matter. He is advised that the conditions of these grants have not been complied with; that the grants have become void; that in the grant of Capt. John A. Sutter and eleven other families, as the same is worded, that the said Sutter can only claim one-twelfth part, with some specific allowances for his extra trouble, pointed out by the laws of Mexico; that the said Sutter, junior, cannot hold any thing under the last grant, if he was not a citizen of the Mexican government at the time the grant was made; and that it is the right of your petitioner, under both the Constitution and laws of the United States, to be heard in favor of his rights in respect to the matters above stated; and that if he does not appear, and the same should be confirmed, so as to take from him all he owns, that such confirmation will be conclusive and binding upon him, in such a manner as to disable him to make any proper defence

to it hereafter; and that he has a right to contest before this board the question whether these grants shall be extended to the east of said Feather river, and to ask and obtain the order of this board to decide in what manner and form the final surveys of the said pretended grants shall be surveyed (if they are confirmed) by the surveyor general of California; and that this right arises to him because he occupies in good faith the land on which he resides, and which, if public land, he of right will obtain a pre-emption right for, and which land is now claimed to be within these grants; and therefore he prays that he may be allowed to do so.

JACOB H. STOVER.

STATE OF CALIFORNIA,
County of Yuba, ss.

Jacob H. Stover, being duly sworn, doth depose and say, the facts set forth in the foregoing petition are true to his own knowledge, except as to those matters stated upon information and belief, and as to those matters he believes them to be true.

JACOB H. STOVER.

Subscribed and sworn to 28th June, A. D. 1853.
CHAS. E. FILKINS,
Jus. Peace Yuba County, Cal.

Filed in office July 14th, 1853.
GEO. FISHER, *Sec'y.*

Recorded in Journal, vol. 3, p. 342.
GEO. FISHER, *Sec'y.*

Opinion and Decision of the Board on the Motion to Intervene.

This is a motion made on behalf of Jacob H. Stover to be allowed to appear in the case of John A. Sutter, who has filed his claim before this board to certain lands, and to contest the right of said Sutter to a confirmation of his claim. He asks that an order may be passed introducing him as a new party to the record with the full right to present proofs, and to be heard in argument in opposition to the claimant's demand, and in favor of a decree in accordance with his views of his own rights.

The right of the claimant as presented in his petition is founded on a grant alleged to have been made by the Mexican authorities. The interest of Stover, who seeks to be made a party in the case, is founded on the fact that he became a settler on a portion of the land claimed by Sutter in 1850 believing it to be public land, and that he has improved it and resided on it ever since, and he claims a right to it by virtue of the act of Congress of March 3d, 1853, giving pre-emption rights in certain cases in California.

The interest he claims is such as to secure him in certain rights to the premises which cannot be disregarded, and which authorize him

to appear and be made a party in the case before the board, and to urge his own claim in opposition to that of Sutter. To sustain the legal right of the applicant to the premises the counsel referred to the pre-emption law above mentioned, and also to several decisions of the highest judicial tribunals of the country. The decisions of the Supreme Court of the United States cited in this case show that when an equitable title only are inchoate, and not a perfect title is claimed under a former government which has ceded territory to the United States with a guaranty of private property, the government has the power to disregard those equities; and if Congress should grant the land to a third person before the equitable was *repreved* into a legal title, the former would hold the premises to the exclusion of the claimant under the former grant. It is then urged that Congress, in providing by the law of 1853 for pre-emption rights in California, has virtually given a preference to the pre-emptionist, and enabled him by settling on the premises to perfect a title in himself to the land.

If this be so, it is manifest that while Congress has provided for the adjudication *for* these claims arising under a former jurisdiction, they have at the same time put it into the power of every person, by settlement on the uncultivated portion of his land, to defeat all the rights of the claimants to perfect his title.

We cannot regard this as the true condition of the case under existing legislation. The act of 1851, under which this commission is organized, has for its object the adjudication of all claims to property by grants from Spain or Mexico within the region of country ceded to the United States by the treaty Guadalupe *Hildago*. It specifies the rules by which such claims shall be adjudicated, and provides on confirmation for the perfection of titles by issuing parties. The provisions of this law are in accordance with the treaty stipulations, and were intended to protect all just rights of claimants, and to consummate them by perfect grants.

The act granting pre-emption rights, approved March 3d, 1853, does not provide for atagonists' titles, nor was it intended to defeat the object of the former law; on the contrary, it in effect re-affirms that object by expressly and in terms excepting from sale and the rights of pre-emption, "all land claimed under any foreign grant or title." At the time this law passed, the claims were thus withheld from any other disposition by Government, until the question in regard to those claims should be determined, or Congress make further disposition of them. Another law was passed, bearing the same date with that last referred to, which extends the pre-emption right to "any settler who has settled or may hereafter settle on lands heretofore reserved on account of claims under French, Spanish, or other grants which have been or shall be hereafter declared by the Supreme Court of the United States to be invalid." It is not necessary here to inquire how far this provision applies to the lands in California; if it so applies, it shows directly that it is the design of Congress in good faith to carry out the provisions of the treaty guarantying private property, and to allow no right even of

own citizens to intervene until the claims under the former Government should be fully examined and declared invalid. If it does not apply here, it still exhibits none the less clearly the policy of the Government in regard to these two classes of claimants.

We are satisfied from a view of the *statuts*, and of the judicial decisions cited by the counsel, that the law has given no pre-emption right which will enable a settler to defeat the claimant under a Mexican grant, while the same is undergoing an examination before the proper authority, with a view to perfect his title if found to be just and valid.

But if this were not so, it is not in the province of this board to investigate or decide upon any claim founded on a pre-emption right to any portion of the public domain. The law on the subject has always committed the decision of such claims in the first instance to the officers of the local land office, where the lands claimed are subject to sale, and it has specified the proofs required and given the necessary instructions for a proper determination of this class of interests. This commission has committed to them a different class of claims. They are confined to the ascertaining and settling private land claims depending upon any right or title derived from the Spanish or Mexican government with reference expressly to the provisions of the treaty, in which such rights are recognised, and by which they are protected. The claim of the applicant as a pre-emption is, therefore, not one which this board can adjudicate or decide, nor could we make any decree establishing his right.

The policy of the Government developed in a series of acts through many successive years, however, affords reason to the applicant to believe that, as a settler, he could be allowed to purchase the land *of* the claim of Sutter should not prove valid. In this sense he may well be considered as having an interest in defeating this claim. It does not follow from this, however, that he can become a party to the record in this case, and be heard in person, or by his counsel, in reference to the rights of the claimant. It was for the Government to determine how they would adjudicate or decide on these Spanish or Mexican claims, before what tribunal and by what rules, and with what scrutiny by counsel or otherwise, they would investigate them.

They have seen fit to appoint an officer, the law agent, to represent the interest of the Government, and to oppose any claim not founded in justice, and within the provisions of the act of Congress. The applicant could claim a pre-emption right only on the ground that the ground was public domain, and not the property of the claimant, and this involves the very duty which the Government has committed to the law agent, and which in every case, not within the provisions of the law, he will doubtless fully perform.

The affidavit of the applicant states many objections to the claim of Capt. Sutter, all of which are such as the law agent will find it his duty to investigate, and if found to exist, will urge against the confirmation of the claim. Indeed, all that this applicant could do, if admitted as a party on the record to these proceedings, would be pre-

cisely that which the Government has already provided for, at the public expense, by the appointment of a legal representative before the board. If he succeeds in his opposition to the claim, all that the applicant requires is done, by declaring the land in question to be a part of the public domain, subject to any right which this applicant or any other may have to it under the laws of the land. We do not find any authority to order the appearance of a third party to be entered upon the record, or to be heard in this case.

Suits involving large tracts of land are seldom tried in which there are not parties interested who do not appear upon the record, and who are not heard in the case. In this case, it is said by the counsel who made the motion that there are several hundred settlers who make the same claim to portions of the premises as his client. If so, it is certain that the business of deciding on the right *whether* our jurisdiction cannot soon be brought to a close. The Government has provided in a better manner for the rights of all parties by assuming the scrutiny of claims which might be presented, and employing able counsel to take of the interests which the applicant as well as all other persons may have in the premises.

In the course of the discussion of this motion yesterday, the law agent very properly expressed his willingness at all times to consult and co-operate with the claimants or their counsel, and to receive from them any information as to facts or testimony, which they believed might tend to show the invalidity of these grants.

The information of the parties here on the ground might be of great importance in showing the true character of the grant or the validity of a subsisting claim under it. It was, therefore, very proper for him to give the parties to understand his readiness to receive any aid at their hands which would put the Government in the possession of any facts in the case, or render any aid in developing the true character of the claim.

The commission will also in this, as in all other cases, afford every proper facility for a full and fair investigation on all sides of every fact which can bear on the rights of persons interested in the subject of adjudication. They do not, however, find the authority to allow the party making this application to be introduced as a third party on the record in the case, and they must, therefore, deny the motion.

Motion denied.

Filed in office July 26th, 1853.

GEO. FISHER, *Sec'y.*

Motion.

JOHN A. SUTTER vs. UNITED STATES. } Case No. 92.

Before the U. S. Land Commissioners.

In the above case, Jacob H. Stover moves the board to be allowed to intervene therein against the above claim, and for liberty to be heard

in the case. This motion is founded on the facts stated in Stover's affidavit herewith filed.

JOHN WILSON,
Attorney for J. H. Stover.

Filed in office July 14th, 1853.

GEO. FISHER, *Sec'y.*

Affidavit of John A. Sutter.

CLAIM OF JOHN A. SUTTER
vs.
THE UNITED STATES. } No. 92.

Personally appeared John A. Sutter, claimant in the above stated case, who, being duly sworn, makes oath and says, that the original deed of conveyance to claimant of John A. Sutter, jr., in said petition mentioned, conveying the interest of said John A. Sutter, junior, in and to the said land in this case claimed, is no longer within the control of claimant, the same having been destroyed by fire among other papers in the fire in Sacramento city about the year .

JOHN A. SUTTER.

Subscribed and sworn to before me, November 3d, A. D. 1853.
R. AUGUSTUS THOMPSON, *Com'r.*

Filed in office Nov. 4, 1853.

GEO. FISHER, *Sec'y.*

Recorded in Journal, vol. 3, page 484.

GEO. FISHER, *Sec'y.*

Motion to amend Petition.

JOHN A. SUTTER, Claimant,
vs.
THE UNITED STATES. } No. 92.

Before the Board of Land Commissioners of the United States.

The claimant in this case asks leave to file an amended petition in the case.

CRITTENDEN, INGE & MARTIN,
Attorneys for Claimant.

Filed in office March 1, 1853.

GEO. FISHER, *Sec'y.*

Recorded in Journal, vol. 3, page 243.

GEO. FISHER, *Sec'y.*

Motion to transfer Case to another position on Docket.

No. 92.—Claim of John A. Sutter to New Helvetia, before the Board of Land Commissioners of the United States.

The claimant moves the board to substitute this case on the trial docket in place of the case No. 300, of Fernando Felis, claimant, trans-

ferring this last case to the position on the docket in which No. 92 now stands.

CRITTENDEN, INGE & MARTIN,
Att'ys for Sutter.

We consent to the above change on the docket.
Filed in office March 28th, 1853.

GEO. FISHER, *Sec'y.*

Recorded in Journal, vol. 3, p. 304.

GEO. FISHER, *Sec'y.*

Order to withdraw Petition.

No. 92.

Ordered, on motion of claimant's counsel, that the amended petition in this case be considered as withdrawn, and that the case stand on the original petition.

This order to be entered as of Tuesday, the 18th of July inst.
Filed in office July 18th, 1854.

GEO. FISHER, *Sec'y.*

Recorded in Journal, vol. 3, p. 721.

GEO. FISHER, *Sec'y.*

Notice for Motion to Intervene.

MR. CRITTENDEN,
Attorney for Gen'l John A. Sutter.

SIR: You will please take notice, that in the case of the claims of Gen'l J. A. Sutter, filed before the board of land comm's for confirmation, I will make a motion on behalf of Jacob H. Stover, upon affidavit made by him, and apply for leave to intervene in said case, and will *man* the board for leave, on the morning of 14th July, 1853, at 10 o'c. a. m. of that day.

JOHN WILSON,
Att'y for Stover.

July 11th, 1853.

Filed in office July 14th, 1853.

GEO. FISHER, *Sec'y.*

Objections of U. S. Law Agent.

No. 92.

Be it remembered, that at the trial of said case the law agent objected against the claimant's counsel reading in evidence the following papers, and assigned therefore the reasons hereafter stated.

Against document purporting to be a grant of 22 leagues of land, from a former governor of California:

Because,

1st. It is not sufficiently shown to have been executed and delivered.

2d. It is shown that one of the grantees is an alien, a minor, and not a resident of California at the date of the grant, and that he was otherwise incapable of holding.

Against the first and second deposition of John J. Vioget:

Because,

1st. It was a mere private survey.

2d. Because the survey was outside of the description contained in the grant.

Against the first and second deposition of John S. Fowler:

Because,

1st. He is an interested party, for whose benefit this claim is presented; and, 2d. Because his testimony is wholly irrelevant, being in reference to matter accruing after the conquest and outside the limits set down in the grant.

Against the deposition of John Bidwell:

Because,

1st. It concerned matters occurring outside the grant; and,

2d. Because it is otherwise irrelevant.

Against the deposition of S. B. Reading:

Because,

1st. It pertains to matters outside the grant.

2d. Because it is otherwise irrelevant.

Against the deposition of Sam'l J. Hensley, for the same reasons alleged against the deposition of Reading.

The law agent also objects against the introduction in evidence of Antonio Senol:

Because,

1st. It is an attempt to prove by parol, that the land granted is outside the description contained in the grants.

Against the deposition of Franklin Bates, Gilbert A. Grant, Samuel Brannan, J. D. Marks and W. E. P. Hartnell, because they are each irrelevant.

Against the deposition of Victor Prudon:

Because,

1st. It is an attempt to vary and explain the instruments relied on in this case by parol testimony; and, 2d. Because it is irrelevant.

Against the deposition of Juan Castanade:

Because it is an attempt to prove by parol testimony, the fact that the claimant and his son petitioned, and the contents of said petition without showing the loss.

The law agent also objects against the introduction of the espediente of the grant to W. A. Leidsdorff, because:

1st. It is an attempt to vary the plain meaning of the instrument relied on by the claimants in this case by extraneous evidence; and, 2d. Because it is wholly irrelevant.

The board overruled each of the foregoing objections, and admitted each of said papers in evidence, to which the law agent then and there severally excepted, and assigns the same as error.

The law agent also objects against the introduction of the map offered as a copy of the original, accompanying the petition of claimant to the governor of California, on the ground that the same does not show an accurate sketch of the country, and is not proven to be a copy.

Filed in office July 18th, 1854.

GEO. FISHER, *Sec'y.*

Stipulation.

JOHN A. SUTTER vs. THE UNITED STATES. } No. 92.

It is hereby agreed and stipulated that the testimony and deposition of John J. Vioget, taken in this case on the 17th day of October, 1853, be so far corrected and revised as relates to the position of the northwest corner of Vioget's survey, which in said deposition is stated to be one mile and a half from the junction of Feather and Yuba rivers. Whereas, on examination made on the 30th day of August, 1854, the witness found the said corner, and the marks thereon, to be the same as originally made by him for John A. Sutter in 1841; and that the said corner is distant from the said junction about six miles, and not one and a half, as formerly stated in his deposition; this being shown by affidavit promised me.

LOUIS BLANDING,
U. S. Asso. Law Agent.

Filed in office Sept. 1st, 1854.

GEO. FISHER, *Sec'y.*

Recorded in Journal, vol. 4, page 25.

GEO. FISHER, *Sec'y.*

Stipulation.

Case No. 92.—Before the U. S. Board of Land Commissioners to ascertain and settle Private Land Claims in California.

It is hereby stipulated and agreed by and between the parties thereto, by the respective attorneys, that the map herein filed, and marked U. T. T. No. 1, annexed to the stipulation, and certified by Leander Ransom, ch'f cl'k U. S. Sur. Gen. Office, shall be deemed, taken, and considered as evidence in this case, with the same force and effect as though duly proved by said Ransom on his oath to be correct.

J. H. McKUNE,
Law Agent.
V. E. HOWARD,
For Claimant.

June 22d, 1854.

Filed in office June 28th, 1854.

GEO. FISHER, *Sec'y.*

[*For map see original, page* 136.]

Opinion of Board by Com'r Thompson.

JOHN A. SUTTER
vs.
THE UNITED STATES. } No. 92.

This is a claim for thirty-three square leagues of land situated on the borders of the Sacramento, American, and Feather rivers.

It is alleged by the claimant, in his petition, that on the 18th of June, 1841, Juan B. Alvarado, being then commander general of the department of the Californias, by virtue of the power and authority in him vested, granted to the petitioner, John A. Sutter, a naturalized citizen of the republic of Mexico, eleven square leagues of the lands on the borders of the Sacramento river, in the vacant lands of the then northern frontier, as exhibited in a sketch or map annexed to his petition for the same, a copy of which accompanies his petition, marked A. (B.) excluding therefrom the lands overflowed by the currents and swelling of the rivers, and supposed to be bounded on the north by the Three Summits, (los Tres Picos,) in latitude 39° 41′ 45″ north; on the east by the borders of the Rio de las Plumas, (Feather river;) on the south by the parallel of 38° 49′ 32″ of north latitude; and on the west by the Sacramento river, and known as, and called "New Helvetia," a copy of which grant accompanies his petition, marked 13 (A.) That in accordance with the terms and conditions of said grant, legal possession of the said land was obtained by said Sutter according to the laws and customs of Mexico, which possession has continued in him and his grantees, unmolested by any conflicting claim or title by any other person.

He further alleges, that on the 5th day of February, 1845, Manuel Micheltorena, then being the commandant general of said department of the Californias, by virtue of the powers in him vested, granted to the said John A. Sutter, and his son, John A. Sutter, jr., being naturalized citizens of Mexico, and residents of said department of the Californias, twenty-two square leagues of the Sobrante or overplus of land lying within his said rancho of New Helvetia, as laid down in the map, which as aforesaid accompanied the grant thereof, a copy of which grant is also annexed to his petition, marked C. That legal possession of the land conveyed in the last mentioned grant was also obtained by the grantees, and has continued in them and those claiming under them up to the time of filing his petition, undisturbed by any conflicting title or claim.

It is further alleged, that all the right, title, and interest of John A. Sutter, jr., in the last mentioned grant, was, by proper conveyance and for a valuable consideration, transferred to and vested in the petitioner, upon which showing and such other evidence, documentary and oral, as may be presented, he prays the commission to decide upon his claim to the lands as above described.

This petition was filed on the 8th of March, 1852, and on the 1st of March, 1853, an amended or supplementary petition was filed by the

claimant, confining the claim to the eleven leagues conceded by the first described grant made by Governor Alvarado on the 18th of June, 1841; but, on the hearing of the case, the last mentioned petition was withdrawn by leave of the board, and the parties proceeded to trial on the one first filed and herein set forth at length.

In examining the questions which arise in the case, the evidence will first be considered in connection with the first described grant of the 18th of June, 1841. John A. Fowler testifies, that in the month of July, 1850, the claimant, John A. Sutter, placed in his hands the original grant from Governor Alvarado to him of eleven square leagues of land, to which was attached a map of the lands described in the grant, together with all the papers appertaining to *to* said grant. That he was at that time the agent of the claimant, and that said grant and other papers remained in his possession until the month of October, 1851, when they were consumed by fire, together with his office and all its contents. This evidence is sufficient to account for the non-production of the grant, and to lay a foundation for the introduction of secondary evidence of the execution, delivery, and contents of the same.

The testimony introduced by the claimant to establish these points, consists, first, of a trace copy of an espediente from the archives of the former government, certified by the United States surveyor general for California, which contains the original petition of John A. Sutter for the grant dated June 15th, 1841, and a rough draught and a copy of the original grant dated June 18, 1841. Second, of a copy of a grant duly certified by the recorder of the county of Sacramento from the records of his office, purporting to be executed by Juan B. Alvarado, constitutional governor of the department of the Californias, and countersigned by Manuel Jimeno, secretary, which corresponds in all essential particulars with that contained in the espediente in the archives. This copy is annexed to the deposition of Joseph Clough, who swears that about the month of April, 1851, he was employed by the recorder of Sacramento county, to copy into his books the original grant from the Mexican government to Captain Sutter of eleven square leagues of land, and that the paper produced is a true copy of the original grant, with a few unimportant variations in the orthography of a few words; that he is acquainted with the signatures of Alvarado and Jimeno, from having seen them attached to grants of lands; that he has no doubt of the genuineness of these signatures attached to the document copied by him, which bore every mark of originality. He never saw Alvarado and Jimeno write, but he judged the paper to be genuine, from the shape and quality of the paper, the two government stamps thereon, one of the years 1839 and 1840, and the provisional one for the years 1841 and 1842, the different handwriting in the instrument, the peculiarity of the writing, and the different inks. Third, the deposition of John Bidwell and W. E. P. Hartnell, both of whom testified to having seen the original grant; and fourth, the testimony of Fowler, who, in addition to his evidence of the destruction of the grant, testifies that while the grant was in his possession as the agent

of John A. Sutter, he had frequent occasions to refer to it, and became familiar with its contents, and that the document marked "Titulo," being part of Exhibit A, filed in this case, is a correct copy of said grant. This portion of the testimony of Fowler is objected to by the law agent, on the ground that he is interested in the result of the claim. His first deposition appears to have been taken without objection, or any question as to the competency. In his second examination, however, the asssociate law agent put the question directly to him as to his interest; in reply to which he distinctly disavows any interest whatever in the result of the case. In order, however, to show such interest, the law agent subsequently introduced a deed from the claimant to the witness, dated July 1st, 1850, conveying to him a large interest in the premises claimed, and a deposition of the claimant, given in a case pending before one of the State courts, stating that he had conveyed such interest to him.

If this testimony was admissible for the purpose for which it is intended, it would scarcely be sufficient to show such an interest in the witness as would disqualify him in opposition to his positive declaration on oath to the contrary. It by no means follows, from the fact that he held an interest in the premises in 1850, that he still retained it in 1853, when his testimony was taken; but the testimony is clearly inadmissible to show such disqualification. The agent of the government having elected to test the competency of the witness by his own examination, and to this extent made him his witness, he cannot now introduce evidence *aliunde* for the purpose of discrediting him. 1st Greenleaf's Ev., sec. 423.

Aside, however, from this view of the question, the statute of California in force at the time those depositions were taken, provides "that no person offered as a witness shall be excluded by reason of his interest in the event of the action, unless he be a party or a person for whose immediate benefit it is prosecuted or defended." Statutes of California, Chap. 142, sec. 304, 305. This law furnishes a rule of decision to the U. S. courts in the State, and is consequently obligatory on this commission. 12th Peters, p. 84. According to this rule, if the agent of the government has succeeded in showing the interest of the witness, we would have no power to exclude his testimony. In either aspect of the question, we can see no ground upon which the objection to incompetency of the witness can be sustained.

But, independent of his testimony, the other facts and circumstances shown in the case are sufficient in the absence of any proofs to the contrary to raise a strong presumption in favor of the due execution of and delivery of the grant, and of the truth of the copy offered in evidence by the claimant.

The existence of a copy in the archives attached to the original petition of the claimant for the land; the fact of a paper corresponding with that copy in all essential particulars, purporting to be duly signed by the governor and secretary, and to bear the government stamps and other evidences of its authenticity required by the laws of Mexico, and

general principle "that whatever would be the rule of law if it was a legal estate is applied in equity to a trust estate." Greenleaf's Ev., vol. 1, p. 406.

The rule of law, therefore, which requires the parties to a deed to be described with sufficient certainty to distinguish them from all others would apply equally to a trust as to any other estate created by it, and this from the obvious necessity of ascertaining who is entitled to the beneficiary interest before any estate could vest. Ibid., vol. 4, p. 261.

An application of these principles to this case will demonstrate that no such trust is created, or can arise, under the grant. It recites that Sutter had solicited the lands for himself and twelve families, and in the granting clause the land is conceded to the said Don Augusto Sutter, for him and his settlers. The word settlers used here evidently refers to the twelve families mentioned in the recital, and if any trust is created it must be in favor of them. But the grantee was not limited to the precise number of twelve; the law only prescribes that as the minimum, and leaves the contractor the liberty of increasing them ad libitum. The greater this increase the more effectually would the object and purpose of the law be answered, and we accordingly find from the testimony in the case that as early as the year 1843 a much larger number were established at different points within the supposed limits of the grant.

The law agent in his argument admits this excess of settlers, and calls upon the counsel for the claimant to point out the particular twelve families who are entitled to the beneficiary interest under the grant; and from the impossibility of doing so, he draws the conclusion that the grant itself is void for uncertainty. This conclusion, however, is not warranted by the rule of law applicable to the subject: where a deed is made to several parties, some of whom are capable of taking and others incapable, it shall accrue to the benefit of those only who are capable of taking. Greenleaf's Ev. 261. This incapacity may arise from the want of a proper description, as well as from any other cause; and in such a case the deed would inure to the benefit of the parties sufficiently described. A deed made to the members of a mercantile firm by the name of the firm, and some of them are too imperfectly described to enable to take, those who are sufficiently described would take under the deed, and a trust would result in favor of the other members of the firm. 7 Ship'l, 413. The reason of this decision is evidently founded on the equal maxim, "et certum est quod certum cede potese," as it is presumed that the members of a firm can be ascertained, either by the articles of copartnership or other evidence aliunde.

A trust made to the inhabitants of the town of B or the county of A, if the town or county be incorporated, with defined territorial limits, is good; but if unincorporated, and the limits undefined, is void for uncertainty. 9th Johns. 73; 8 Johns. 385. It also seems that a grant to the inhabitants of a territory, precisely described and bounded, may be good. 10th Perk. 364, 367.

If, therefore, the grant in this case had been to Sutter, for his own

benefit and that of all the settlers within the ascertained limits of the land, according to these authorities the grant would be good, and Sutter would take, subject to the equitable rights of the settlers. But the grant here, as we have already seen, is to Sutter, for him and twelve families only; and as there is no limitation as to the number of settlers, and no possible means of ascertaining the particular settlers in whom the beneficiary interest claimed for them would vest, that portion of the instrument which refers to them must be rejected for uncertainty. They could there take no direct interest under the grant, either as tenants in common or as cestui que trust, and the title would inure to the benefit of the granteee, Sutter, subject to the conditions imposed by it.

But to take another view of the subject: It is manifest, from the language of the grant, that its intention was to vest the legal estate in Sutter; and the most that can be claimed by the settlers is, that they acquired an equitable interest in the premises granted. Admitting, for the sake of argument, that the title does confer on them such an interest, and that the grantee, Sutter, was in fact a trustee for them to the extent of that interest, it is not perceived that such a state of facts could in any manner affect or control the final result of the claim. It would clearly be the duty of the commission, in such a case, to confirm the claim to the party showing himself entitled to the legal estate, leaving those claiming the equity to their remedy before the proper local tribunal for the enforcement of the trust. This doctrine is distinctly affirmed by the Supreme Court in the case of the United States vs Patterson, reported in 15th Howard, p. 10. In that case, the validity of the original grants, and the conveyances by the grantees to the trading firm of William Burr & Co., were established by the testimony. The appellee, Patterson, claimed the interest of William Burr in the premises, by virtue of a conveyance from his heirs, which purported to be executed by their attorney in fact, Robert Thompson; but no power of attorney or other authority to Thompson to convey was produced on the trial. Upon the case thus presented, the court decided that, in consequence of the failure of the claimant to show any authority from the heirs of Burr to Thompson to make the conveyance, a confirmation could not be made to him; but the right of the original grantees being established as between them and the United States, and transferred by proper legal conveyance to Burr, a decree was ordered to be entered, confirming the grants for the use of the legal representatives of William Burr, deceased, thus saving the rights of all parties. The point was distinctly raised in the argument by the counsel for the appellee, "That the court would not undertake to settle the rights of the parties in interest, but leave them to litigate their rights in the court below or in the State tribunals." This point, as shown by the above synopsis of the case, is fully sustained by the opinion of the court; and the effect of the decision, should a patent issue to the heirs of Burr, would be to constitute them trustees for the benefit of their *alconee*, Patterson, in case he should be able, by the produc-

tion or other competent proof of the power of attorney to Thompson, to establish his right under the conveyance to him. So, in the present case, upon the supposition that the grant created a trust in Sutter for the benefit of his settlers, a confirmation to him would not *not* in any manner affect or impair their rights under the grant, and he would take subject to any equities to which the cestui que trust might show themselves entitled.

Having thus disposed of the objections of the law agent on this point, will return to the consideration of the original proposition, to wit: What is the true notion and character of the grant?

We have already seen by the 16th article of the law of the 18th of August, 1824, the whole subject of colonization in the territories of the Republic was committed to the supreme government. The regulation of the 21st of November, 1828, was made for the purpose of carrying out that provision of the law, and constitutes the source from which the Mexican authorities in California derive their power to make grants of lands. The grant under consideration was clearly made by virtue of this authority, and in order to ascertain its true nature and intent, it will be necessary to examine it with reference to the provisions contained in the regulation.

In making this examination, we are met at the very threshold by a marked distinction between this regulation and the laws of Coahuila and Texas before referred to. By these laws it will be recollected that the empresario received no title to any lands until the terms of his contract had been complied with, and then only to that portion which he was to receive as a compensation for introducing the colonists, and the settlers themselves received the title for their respective parcels directly from the government through the agency of a commissioner appointed for that purpose. On the other hand, the regulation of 1828 contemplates the issuing of the grant in the first instance directly to the empresario. Its language is, that *of* the political chiefs of the Territories are authorized to grant vacant lands in their respective Territories to empresarios, families, or individuals, making no distinction either in character of the grants or the several classes of persons to which they might be made. The 2d, 3d, and 4th articles, prescribing the preliminary steps and modes of proceeding, both on the part of the petitioner and the governor, apply equally to the several classes referred to in the first. The 5th and 7th make a distinction between grants to individuals and families and those made to empresarios. The 5th provides, that grants made to individuals and families shall not be definitively valid without the previous consent of the territorial deputation; and the 7th, that grants made to empresarios for them to colonize with many families shall not be held definitively valid until the approval of the supreme government be obtained. The language of this last article indicates clearly the person in whom the title to lands granted for colonization was to vest, as well as the conditions on which the grant was made. The 10th article prescribes the minimum number of families for the settlement of which a colonization grant could issue. The 11th

requires the governor to designate to the new colonists a proportionate time within which he shall be bound to cultivate and occupy the land, on the terms, and with the number of persons or families which he may have contracted for, and imposes a penalty of a forfeiture or avoidance of the grant for a failure on the part of the grantee to comply with its terms, reserving, nevertheless, the power in the governor to revalidate it in proportion to which the party may have fulfilled. The 12th article directs the new colonists, after having cultivated or occupied the land agreeably to his contract (capitulacion,) to prove the same before the municipal authority, in order that he may consolidate and secure his right of ownership, so that he might dispose freely thereof. The articles above enumerated embrace all the material provisions of the regulation having reference to grants made to empresarios for the purpose of colonization, and from them we adduce the following conclusions:

1st. That the political chiefs or governors of the territories of Mexico were authorized to make grants of land directly to empresarios or contractors, for colonization in the same manner and with the same legal effect as private grants to individuals or families, with the exception that the former required the approval of the supreme government to give them definitive validity, when the latter only required the consent of the territorial deputation for that purpose.

2d. That the effect of such a grant, when ratified by the supreme government, was to vest the legal title to the land in the grantee or empresario, in consideration of which he was bound, within a specified time, to settle on the lands a stipulated number of families, which should in no case be less than twelve, thus constituting it a grant with conditions subsequent.

3d. That the grant so made was subject to forfeiture for the failure of the grantee to comply with the conditions, leaving it, however, discretionary with the governor to remit the forfeiture and revalidate the grant to the extent within which the party may have fulfilled them; or, in other words, in proportion to the number of families he may have introduced and settled on the land.

4th. That the grantee, having complied with the conditions of his grant, and proved the same before the proper municipal authority, and due record of the fact being made, the grant was discharged of the conditions and became single, vesting the title absolutely in the grantee.

A careful analysis of the language and terms of the regulations fully sustains the correctness of these conclusions: The first article confers upon the political chief the power to make grants to empresarios as fully and in the same terms as to the other parties described in it. The 7th provides for the approval of the supreme government, precisely as the 5th requires the consent of the territorial deputation in the other cases; it moreover declares the object for which such grants were to be made, namely, to colonize with many families, thus making the settlement of land a consideration for the grant to be discharged in futuro. The 11th article prescribes the penalty for the failure of the grantee to comply

with the conditions of the grant, and clearly treats them as conditions subsequent, the non-performance of which involved the avoidance or forfeiture of the rights which had vested under it. It will thus be seen, that the regulation makes no distinction in the legal effect of the several classes of grants provided for by it. The only difference is in the purposes for which it is made, and the consequent variance in the character of the conditions imposed or implied by it. A grant to an individual imposed the condition of occupation or cultivation, as the *considerate* on which it was founded, and was usually made to him for his own benefit and that of his family, but it has never been contended that the rights of the grantee in the premises were in any degree impaired by the use of this language, or that it conferred any special rights, legal or equitable, on his family. The full right of property vested in the grantee, subject only to the general provisions of the laws on the subject, and so in the case of an empresario grant: it involved the condition of the introduction and settlement on the land of twelve or more families, according to his stipulation; and it might, as in the present case, be made to the grantee for his own benefit and that of his settlers; but the use of this language would not, any more than in the former case, confer any special rights on the settlers. The words of grant apply to the grantee alone, and those which follow were probably inserted to indicate the nature of the grant, and the purpose for which it was made. A comparison of the title now under consideration with these provisions, can leave but little doubt that it was intended to be a colonization or empresario grant within the provisions of the law of the 18th of August, 1824, and the regulation of 1828. It recites that the grantee had solicited the lands for his own benefit, and that of twelve families, the minimum number authorized by the regulation for grants of that description; the grant is made in accordance with the prayer of the petition to him, for his own benefit, and that of his settlers; it is also made subject to the approval of the supreme government, a condition only applicable to grants made to empresarios. Those provisions embody all the distinctive features required by the regulation in making grants of this character, and are sufficient to bring it within that class of titles.

In relation to the terms and conditions on which the settlements were to be made, the regulations are entirely silent. The only provision we have been able to find on that subject is contained in the 14th article of the law of August, 1824, which simply the contracts which the empresario may make with his settlers, and imposes no restrictions on such contracts further than that they shall not be contrary to the laws of the republic. From this it would appear that the matter was left entirely to the empresario to make such arrangements with his colonists in conformity with the law and the objects of grant as might be satisfactory and advantageous to the parties. After a careful examination of this branch of the subject, we are satisfied that the effect of the grant was to vest the right of property in the grantee, Sutter, subject to the condition of settling twelve families on the premises granted; and that

in making such settlements, he was at liberty to make such contract with his settlers as might be mutually agreed on between them, provided they were not contrary to the law of the land, nor inconsistent with the purposes and intent of the grant. No approval of the grant by the supreme government appears to have been had. On this point, the rule laid down by the commission in cases of ordinary grants, where no approval of the deputation or departmental assembly is shown, would apply equally in the present. That rule may be briefly stated as follows:

That the failure of the grantee to show such approval would not vitiate the grant, but would operate to reduce his title from a legal to an equitable one, and would not affect his right to a confirmation where a substantial compliance with the conditions of the grant were proved. The effect, therefore, of the failure to show in the present case the approval of the supreme government, must depend upon the question whether there has been such a performance of the conditions of the grant by the grantee as would entitle him in equity to a confirmation of his claim, which question we will now proceed to consider.

The grant prescribes no time within which the twelve families mentioned in it were to be settled on the land. The reason of this omission may probably be found in the fact shown by the testimony, that at the time the grant was made the grantee, Sutter, had already a large number of persons settled in and about the establishment of New Helvetia, and within the supposed limits of the grant. It therefore became necessary that he should obtain the legal title in order to enable him to comply with the contracts he may have entered into with his settlers under the provisional right of occupation referred to in his petition for the grant. But whether this supposition be correct or not, according to the common law, a reasonable time would be allowed for the performance of the conditions; and according to the usage and custom under the Mexican and Spanish governments, if not by the express terms of the laws, even where there was a time limited within which the conditions of occupation or cultivation were to be performed, and the party went on and occupied according to the terms of his grant, after the expiration of the time, the rights of the grantee were always recognised and respected by the authorities. Regarding the question in either aspect, we think the evidence is sufficient to establish a compliance with the condition of settling twelve families imposed by the regulation on grants of this character. Antonio Sunol testifies that Captain Sutter commenced his establishment at New Helvetia about the year 1837 or 1838; that he visited the place about a year and a half after Sutter landed, at which time the latter had erected several houses and had fortified himself against the Indians; that there were from twenty to thirty persons, besides Indians, living there in Sutter's employment—some being employed as mechanics, and some in farming; he had at that time more than two hundred acres of land in cultivation. Witness visited the place again in 1841, the year the grant was made. The establishment had then been considerably enlarged. He

had tan yards on the river, and workshops within the fort, and had extended his cultivation. The fort was built of adobes, and was about five hundred varas square, with artillery mounted on the walls. The number of persons had increased to some four or five hundred, including Indians. Was there again in 1842, or 1843; found still more people and more cultivated land than on his former visit. In the whole settlement there were many more people. Ranchos were established and the people were scattered about them; there were some Americans, some Frenchmen, and some of the people of the country. He does not know how far they were under Captain Sutter. In 1843 there may have been about two hundred souls in the settlement, exclusive of Indians. He knows that there were at that time more than twelve families settled and permanently established. In his cross examination the witness states that there were about twenty families of Europeans and Californians, and from ten to twelve of civilized Indians from the different missions, besides transient Indians who came to work and went away again. This testimony is substantially corroborated by the depositions of John Bidwell, Samuel J. Hensley, Pearson B. Reading, and other witnesses in the case. Bidwell testifies to the settlement of more than twelve families within the supposed limits of the grant from 1841 to 1843, and gives the names of many of the settlers, together with the dates and location of their respective settlement. The other witnesses testify to other settlements between that time and the occupation by the Americans in 1846. Samuel Kybens testifies that when he arrived in the country in October, 1846, there were twenty-one families settled on the rancho, thirteen of which had received lands of Capt. Sutter, to his knowledge. The testimony on this point establishes the fact beyond a reasonable doubt that at the time the grant was made in 1841, or very shortly afterwards, the twelve families required by the law had been settled on the land, and between that period and the American occupation the number had been largely increased. It does not appear on what terms these settlements were made, or the nature of the tenure by which the lands occupied by the settlers were generally held. In some instances it is shown that sub-grants were made by the claimant to his settlers in fee simple, in others for a term of years, but in most of the cases there is no evidence as to the right or title under which the settlements were made. According to the views expressed in a former part of this opinion, that fact is not material in the decision of this question. The law appears to have left the terms of settlement to be agreed on between the empresario and his colonists, with the single restriction that they shall not be in contravention of the laws of the republic. The actual settlement and occupation of the land being the object and purpose of the law, the establishment of that fact by the proof must be considered a compliance with the terms of the grant, and sufficient to vest in the grantee, and those claiming under him, the right of property in the premises discharged of the condition. The failure, therefore, of the claimant to show the approval of the grant by the supreme government

can on this ground present no obstacle to his right in equity to a confirmation.

It is also urged by the counsel for the claimant that the repeated recognition by the Mexican authorities of the rights of the grantee under the grant is sufficient to raise a presumption it had been duly approved by the government, but, from the view taken on the subject, the decision of this point would not affect the result; it is therefore unnecessary to discuss it. It may be remarked, however, in this connection, that the several acts by the Mexican authorities in recognition of those rights and their long acquaintance in the continued and uninterrupted exercise of notorious acts of ownership over the premises by the claimant, as disclosed by the testimony, are strong corroborating circumstances going to show that in their estimation those rights had been perfected, and his title to the same established.

The only remaining question arising under this grant, is whether the descriptions contained in it are sufficient to locate and identify the land with sufficient certainty to segregate it from the public domain. No juridical possession or measurement of the land, as required by the fourth condition of the grant, was ever obtained; the validity of the title, therefore, so far as the question of location and identity is concerned, must depend upon the descriptions contained in the instrument itself, aided by such extraneous testimony as may be properly adduced for the purpose of elucidating and explaining them.

In order to understand this question properly, it will be necessary to take into consideration the condition of the country, and the topographical features of the district within which the lands were to be located. It appears from the testimony that at the time Capt. Sutter commenced his settlement at New Helvetia, the country lying east of Sonoma in the north, and San José in the south, was in a wild and uncultivated state, inhabited only by barbarous and uncivilized tribes of Indians, whose frequent incursions and depredations upon the frontier settlements were a continued source of terror to the inhabitants. The country bordering on the Sacramento river and its tributaries presents some peculiar features. Along the borders of these streams there is, according to the testimony, a belt or strip of fertile land, sufficiently elevated to be above the regular periodical overflow of the rivers, and well adapted to agricultural purposes. This belt of land varies from about one fourth of a mile to two miles in width, and gradually increases its average breadth as it ascends the rivers and approaches the mountains; as it recedes from the rivers it becomes lower, and finally sinks unto marshy or tule lands, which are overflowed by means of sloughs passing from the rivers through the high lands on their banks. These tule or marsh lands are covered with water during five or six months of the year, and a portion of them during the whole year. They extend from the elevated strip of land above described, from six to ten miles back from the river, and are entirely unfit for either pasturage or cultivation.

In the year 1837 or 1838, Capt. John A. Sutter, the present claim-

ant, with the approval of the departmental authorities, as appears from his petition, commenced a settlement in the district of country above described, with the three-fold object of occupying and cultivating the lands, reclaiming the Indians from their savage habits, and erecting a barrier to their future depredations on the unprotected inhabitants of the frontier. With this view, he selected a spot near the junction of the American and Sacramento rivers, which he named New Helvetia, and collecting around him a considerable number of whites and Indians, erected fortifications and other necessary buildings, and enclosed and put in cultivation a considerable portion of land. Having demonstrated the feasibility of the experiment by three years of successful enterprise and industry, and with a view of extending and enlarging his establishment by the settlement of twelve families, he petitioned the governor for a grant of eleven leagues of land in his said establishment called New Helvetia, according to the sketch which accompanied his petition. This petition was promptly acceded to by the governor, and a title in due form issued to him for the lands solicited, in the preamble to which the governor takes occasion to notice in complimentary terms the service rendered to the country by what he had already accomplished. The question is now presented whether this grant, aided by other testimony offered by the claimant, contains a sufficient description to segregate the lands from the public domain, and invest the grantee with a right of property in the premises.

The recital to the grant declares that Captain Sutter had solicited eleven leagues of land on the borders or margins (los margines) of the Sacramento river.

In the granting clause the lands referred to are conceded to him by the name of New Helvetia. And again, in the third article of the grant it is more particularly described as follows: "The land of which donation is made to him is of the extent of eleven square leagues, (sitios de ganado mayor) comprised in the extent (or limits) marked out by the map annexed to the espediente, without including the lands overflowed by the swelling and current of the rivers. It is bounded on the north by the Three Peaks, (los Tres Picas,) in 39° 41′ 45″ of north latitude; on the east, the margins of Feather river; on the south by the parallel of 38° 49′ 32″ of north latitude, and on the west the Sacramento river. It will be seen from this description, that the map which accompanies the original petition for the grant, and which should have been annexed to the espediente, is referred to *an* order to fix the location and identify the particular eleven leagues intended to be granted, and thus becomes a part of the grant for that purpose. This map is not now to be found in the espediente in the archives, committed to the custody of the U. S. surveyor general; but a traced copy of a map is filed with the petition of the claimant, which he alleges is a copy of the one annexed to his original petition and referred to in the grant. As this map forms a most material element in the identification of the land and the establishment of its boundaries, the question as to its authenticity as a copy of the original on which the grant was founded becomes important.

John S. Fowler testifies on this point, that when he received the original grant for the eleven leagues of land from Capt. Sutter, in the year 1850, there was a map purporting to be executed by Vioget, attached to it, which was destroyed by fire, together with the grant, in the fall of 1851, and that the map filed in the case, marked Exhibit B, is a true copy of the one so destroyed, with some immaterial exceptions. J. J. Vioget testifies, that in the month of January, 1841, he made a survey of the lands of New Helvetia for Capt. Sutter, and executed a map of the same, and that the map marked Exhibit B is, in its general outlines, a correct copy of said original map, except that some objects are omitted and some inserted, such as houses and farms, which were not in the said original. Now, we know from our observation in numerous cases which have come before us, that it was a frequent custom of the Mexican authorities to annex certified copies of the maps contained in the espediente to such grants as had reference to them, for greater certainty of description, and in some cases the original map, instead of being filed with the espediente, was attached to the title, and delivered with it to the grantee. The grant to Captain Sutter was in the nature of an empresario grant, and contemplated side grants from him to his settlers; it is therefore a most reasonable inference to suppose that either the original map, or a copy of it, would be delivered with the grant, in order to enable him to satisfy them as the limits within which he was authorized to make settlements and subalienations. Capt. Vioget's survey and map were made a few months before Capt. Sutter applied for his grant, and it is a legitimate presumption to suppose that the survey was made preparatory to that application, and that the map founded upon it was intended as the one with which, under the law, he was required to accompany his petition. This presumption is greatly strengthened by the fact that the objects and lines delineated on the map correspond, in all material respects, with the words of description contained in the grant. Taking these circumstances in connection with the testimony of Fowler, who identifies the paper marked Exhibit B, as a true copy of the map which he found attached to the original grant in 1850, and that of Vioget, who proves the same paper to be substantially a correct copy of the one made by him in 1841, we are led to the conclusion, with a moral certainty approaching to demonstration, that the map executed by Vioget was the one which accompanied the petition of Sutter for the grant, and which is referred to in that instrument; and that the paper marked Exhibit B is, in all essential particulars, a true copy of the same, and as such is admissible in evidence for the purpose of locating and identifying the lands claimed under the grant.

Admitting, then, the map in question as competent testimony for this purpose, we will now proceed to consider the evidence on this point, in connection with the well-settled principles of law which control in disputed questions of locations and boundaries. The first of these to which we will revert is, as to the admissibility of parol proof to explain written instruments.

The doctrine laid down by law agent, that parol testimony cannot be introduced to vary the language of a written instrument, or supply a defect, is unquestionably true, but it is equally true that such testimony may be adduced to ascertain the meaning and intent of the language used, and in what manner the terms of the instrument affect the property or subject-matter. In this view, evidence is admissible of all the circumstances surrounding the author of the instrument all the time of its execution. Thus, if the language of the instrument is applicable to several persons, to several parcels of land, to several monuments or boundaries, &c., evidence is admissible of extrinsic circumstances, tending to show what persons, what lands, or what boundaries or monuments were intended by the party, or to ascertain his meaning in any other respect; the rule only excluding parol evidence of other language than that which is contained in the instrument. Again, when the conveyance of an estate designates it as Blackacre, parol testimony must be admitted to show what place is known by that name. 1st Greenleaf's Ev., sections 287, 288. In this case, by reference to the petition of Capt. Sutter for the grant, we find that he solicited eleven leagues of land in his establishment, called New Helvetia, according to the land represented in the sketch or map which accompanied his petition, and in the granting clause of the title the governor concedes to him the said land called New Helvetia. The language of both these documents clearly refers to a locality with a well-recognised name and designation by which it had been previously known, and not one by which it was only to be distinguished in future. Parol evidence should therefore be admitted, as in the case of Blackacre, to show the particular locality known as New Helvetia. In the third article of the grant, however, the governor proceeds to describe the land more particularly by metes and bounds, and this description, it is contended on the part of the government, leaves out the place known as New Helvetia; and it is therefore argued that all the testimony relating to that settlement should be excluded from the case.

This objection of the law agent is based upon the fact that the grant calls for the line of 38° 49′ 32″ north latitude as the southern boundary of the land, the true position of which is near the mouth of Feather river, while the settlement of New Helvetia is situated at the junction of the Sacramento and American rivers, some twenty miles south of that point. If the line of latitude above referred to furnished the only description by which the southern boundary of the tract could be ascertained, this objection would be conclusive on this branch of the question, but there are other elements which enter into its consideration which seem to have been, in a great measure, overlooked. Among these elements, the intention of the grantor at the time the grant was made is a most material one, and, in order to ascertain that intention, we must not only take the language of the grant itself, but, as has been already shown, such extrinsic circumstances as tend to show what was the subject-matter of the concession. "In ascertaining the subject conveyed, the intent governs as in other cases of contract, and the deed

must receive the same interpretation it would have received by the parties themselves immediately after its execution, and the subsequent development of facts cannot affect that interpretation." Greenleaf's *Cruise* title, 32, Chap. 21; note citing 18 Wend. 157; 5th Greenleaf, 496; 6th New Ham. 205.

"The intent of the parties, where it is not otherwise apparent, is to be" sought by giving greater effect to those things about which people are least liable to be mistaken. 17 Massachusetts, 210; 9th Cranch, 178.

"The general rule of construction is, that the most material and most certain calls shall control those which are less certain and less material." 7 Wheat. 7. "It is a general rule when all the calls of an entry cannot be complied with, because some are vague or repugnant, the latter may be rejected or controlled by other material calls which are consistent and certain; course and distance yield to visible known and definite objects, but they do not yield unless to calls more material and equally certain." 2 Wheat. 316.

"When the different parts of a description of the metes and bounds are repugnant, and contradictory to each other, such parts may be rejected, and such retained as will leave enough plainly and clearly to designate the land intended to be conveyed." 1st Paine, 496. In White vs. Engan, 1st Bay., 247, cited in 5th Greenleaf, 434, the land was considered as bounded north on Sir John Colldon, and south on Coxe; whereas, in fact, it was bounded south on Colliton, and north on Coxe. Parol testimony was admitted to correct the mistake. Here was a latent ambiguity, description and fact not agreeing. There is no question that where the course and the monument disagree, the monument is to govern. Ibid. and 3d Greenleaf, 71. In the last cited case the court lay down the rule to be, what is more certain must prevail over that which is less certain: or, in other words, where the length or course of a descriptive line will not agree with a known and fixed monument, which is named in the deed, the inaccuracy of the line must give way to the certainty and trust of the monument. The court accordingly decided that where a line by a particular course was given to include a certain farm of A, and the course would not include the farm, the line must be changed without regard to the course called for, so as to embrace it, and they give as the reason of this decision that the farm is a well known and immovable monument, to which the mathematical line must yield. Authorities on this point might be multiplied almost ad *finitum;* but those adduced are sufficient to show that the position of the agent of the Government in relation to cannot be sustained. The circumstances surrounding the parties at the time the grant was made, the language both of the petition for the grant and the grant itself, show conclusively the true intent and meaning of the instrument. Capt. Sutter had, some three years before, with the sanction of the Government, settled himself at a point near the junction of the American and Sacramento rivers, and had, at great expense and labor, built up an extensive settlement in that locality, which, in honor of the land of his nativity, he named New Helvetia.

It is natural to suppose that he would be desirous of indemnifying himself for his trouble and expense, and of obtaining the means of remunerating the settlers whom he had induced to join with him in the enterprise, by receiving a title to the lands whose value had been thus enhanced by their common efforts, and on which their settlements were established. It was the point where he had erected his fortifications to protect his settlers from the depredations of the hostile tribes, where he had constructed houses for their habitation, and had enclosed and reduced to profitable cultivation extensive fields for their common subsistence. To suppose that Capt. Sutter in selecting and the governor in granting the land, should have intended to exclude that portion on which all his labor and money had been expended, and which was principally looked to as the reward for three years of toil, privation and danger in an unsettled wilderness, is an assumption so improbable, not to say absurd, so inconsistent with the terms of the grant, and the motives which usually influence human conduct, as to be utterly irreconcilable either within the rules of evidence applicable to the subject, or the plainest dictates of reason and common sense.

In accordance, then, with what we might reasonably suppose would be the conduct of an intelligent and judicious man in circumstances as Capt. Sutter was, we find him, in conformity with the requirements of the Mexican law on the subject, soliciting a grant of eleven square leagues of land in his establishment called New Helvetia, and the governor responding to the solicitation by granting the land as prayed for, and designating it by the name mentioned in the petition, and by which, according to the testimony of Hartnell, the locality was generally recognised and known.

The circumstances are sufficient to show most clearly that it was not only the intention of the governor to grant the lands on which the establishment of New Helvetia was situated, but that they in fact constituted the principal subject of the grant. In this review, then, of the question without reference to the map, and taking the words of description contained in the grant alone, and applying the rules of law as above referred to, the concession of the land known as New Helvetia, as expressed in the body of the grant, cannot be affected by the erroneous location of its southern boundary on the parallel of 38° 49′ 32″ of north latitude, *and* more than the erroneous line of 39° 41′ 45″ could carry the northern boundary beyond the "Three Peaks," the great natural monument fixing the limits on that side within which the location was to be made. The establishment of southern boundary at the point subsequently ascertained as the true position of the parallel of 38° 49′ 32″ would be inconsistent with and repugnant to the manifest intention of the grant as shown by the other parts of the description contained in it; its insertion on the grant was evidently, from all the circumstances disclosed by the testimony, the result of inadvertence and mistake on the part of the officer making it; it may, therefore, be rejected, and the true boundary established. 1 Paine, 496; 3 Greenleaf, 71, before cited, and Greenleaf's Ev., vol. 4, 338, and note citing 2d

Met., 41. The effect of its adoption would be to prefer a more mathematical line, always more or less liable to error, to known visible and immovable monuments, and to the lines delineated on the map referred to in the grant, which would be in direct conflict with the authorities on the subject, all of which concur in giving the preference to the latter above the two former.

We conclude, therefore, after the examination of the law and evidence on this point, that the southern boundary of the land cannot be located on the parallel of latitude called for by the grant, and that on ascertaining its true position, the locality known at the date of the grant as "New Helvetia," and forming, as we have seen, a material part of the subject-matter of the concession, must constitute a controlling point so far as its inclusion within the limits of the survey is concerned.

Although at the time the survey was made, the particular locality called New Helvetia was well known and recognised both by the government and *and* the people of the country, yet its precise extent and limits were unascertained. One object of the grant was not only to designate the exterior bounds within which the land was to be located, but also to define the particular boundaries of the tract granted by that name. For this purpose, reference is made to the general features of the country, to well known natural objects and monuments, and to a map or diseño on which those objects were represented, and of the particular tract delineated.

We have already shown that this map, or a certified copy of it, was annexed to the grant when it was delivered to the grantee, and was with the grant itself destroyed by fire in the year 1851. It was also shown that the exhibit marked B, and filed with the petition of the claimant, is substantially a correct copy of the map, and as such, is admissible testimony to prove the location and boundaries of the land. Taking then this map in connection with the verbal descriptions contained in the grant, and the testimony of Vioget, by whom the survey and map were made, and apply the rules of law applicable to cases where a map or plat is referred to in a deed as part of the description, all difficulty in fixing a true position of the southern boundary is at once removed. A reference to a few authorities will be sufficient to sustain fully the correctness of this position. In the case of McIver vs. Wharton, reported in 4th Wheaton, page 444, the controlling effect of the lines delineated on the plat referred to in the grant, over the courses and distances called for by the instrument, is distinctly affirmed by the Supreme Court. The court there lay down the rule, that when lines are delineated on a map or plan, and are referred to in a deed, the courses, distances, and other particulars appearing on the plan are to be as much regarded as the true description of the land conveyed, as they would be if expressly recited in the deed. In this last case the defendant in the court below offered to prove that the line as represented on the map was different from that called for in the deed, and the map was incorrect and defective, and not properly describing the premises marked out; but the court rejected the testimony

on the ground that he was concluded by the sketch of the back of the deed, to which reference was made, and this decision was affirmed by the Supreme Court. To the same effect, see 6 Humphreys, 400; 4th Sergeant and Rawle, 461; 5th Greenleaf R. 24; 3d Greenleaf, 126; 7th do., 61, etc.

The map before us represents an extensive scope of territory, embracing portions of the Sacramento, Feather, and American rivers, and the intermediate country, extending from a point several miles below the mouth of the latter stream on the south, to the "Three Peaks" on the north, a distance of from forty-five to fifty miles, and embracing about the same extent from east to west. Immediately below the American, and between that and the Sacramento river, is represented the establishment of New Helvetia. A few miles south of that point a line is drawn, crossing the Sacramento river, and passing near the southern point of a laguna, marked line of north latitude 38° 49′ 32″. This line, according to the testimony of Capt. Vioget, was marked by him as the southern boundary of the land, at the time he made the survey, under the supposition that it represented correctly that parallel of latitude, though he then informed Capt. Sutter that, owing to the imperfection of the instruments with which the observations were made, he might be mistaken; subsequent and more correct observations made by Col. Fremont about the year 1846 proved such to be the fact, and that the true position of the parallel some twenty miles further north, and near the mouth of Feather river. It is not to be presumed that the governor could be informed of the precise points where the several degrees of latitude and longitude crossed that then remote and unsettled region; and we may reasonably assume that the only information which he had on the subject was derived from the map which accompanied the petition for the grant. He therefore established the southern boundary of the land on the Sacramento, at the point there indicated, and he described it by the terms then used. Subsequent observation demonstrated that description to be erroneous; but the true position of the boundary upon the ground is fully established by reference to natural objects and other monuments represented on the map, and by the testimony of Vioget, by whom the survey and map was made. This identification of the true boundary by natural or artificial monuments, by lines delineated on a map referred to in the grant, and by extrinsic testimony, must, according to all the authorities, prevail over a misdescription of course and distance, or the erroneous location of a mere mathematical or astronomical line. The southern limit of the land must therefore be considered as established at the point on the Sacramento river where the marked line of north latitude 38° 49′ 32″ is represented on the map as crossing that stream, and which, at the time the grant was made, was supposed to be the true position of that parallel.

Some question might arise as to the intent and meaning of the words contained in the grant, making the margins of Feather river the eastern boundary of the tract, upon the ground that, as a general rule of con-

struction, the words by, to, or, from, and others of a like import, when referring to limits or boundaries, are exclusive of the objects called for; but this rule is subject to exception when, by manifest implication, it appears that they were intended in a different sense. The ruling of the Supreme Court in the case of McIver vs. Wharton, 4 Wheaton, 444, before cited, is conclusive on this point, so far as it arises in the present case. In that case, the grant called for lands lying on Crow creek, and described them by certain courses and distances. By these calls, Crow creek would have been exclued from the tract; but a plat was annexed to the grant, and referred to as part of the description, which represented Crow creek as running through the land. The court decided that the calls for course and distance must yield to the lines represented in the map, as being more certain and expressive of the intention of the grant, and, as a necessary consequence, that the grantee was entitled to the lands on both sides of the creek; so, in this case, the map represents Feather river as running nearly equidistant between the two dotted lines which form the exterior limits of the survey; the grant being made according to the map, the calls of the former would be explained and controlled by lines represented on the latter. Applying this rule, then, in connection with the testimony of Vioget, the calls of the grant for margins of Feather river were clearly intended to include the lands lying on both sides of the stream.

The preceding portion of this opinion was prepared some time since upon the first submission of the case. The two members who then composed the commission being unable to agree on a decision, it was restored to the docket and re-submitted to a full board, pending which some additional testimony was taken, both on the part of the government and claimant, which is strongly confirmatory of the views herein before expressed. It may be proper also to remark, that since that time the opinions of the Supreme Court in the cases of John C. Fremont vs. The United States, and The United States vs. Archibald Ritchie, have been received. Had we previously been in possession of the views of that court, it might have superseded the necessity of examining so much in detail some of the questions presented for our consideration; but, as that examination is some degree calculated to throw light upon the whole merits of the claim, we have not thought it necessary to make any change in the opinion on that account.

We will now proceed to consider the case in reference to that portion of the claim covered by the grant, alleged to have been made by Gov. Micheltorena to John Augustus Sutter, for twenty-two square leagues of the surplus lands within the rancho called New Helvetia.

The original of this grant, like the one already considered, it is alleged was destroyed by fire in the city of Sacramento, in the month of October, 1851, and the fact of such loss and destruction is established by the testimony which was considered in relation to the former one. Upon the foundation thus laid, the claimant has introduced the following evidence to prove the due execution and contents of said grant. A paper marked C, purporting to be a copy of a grant made on the

5th of February, 1845, in the usual form, by Governor Manuel Micheltorena, conceding to John Augusto Sutter, and his son John A. Sutter, for the benefit of themselves and family, and in consideration of the good conduct and services which the Señor Sutter had rendered, and was at that time rendering, the surplus of land in his rancho, named New Helvetia, as laid down on the map which accompanied the grant, to the extent of twenty-two square leagues, signed Manuel Micheltorena, and Juan Castenada, secretary ad interim.

John A. Fowler testifies, in relation to this document, that it is a true copy of one of the grants delivered to him by Capt. Sutter in 1850, and which was destroyed by fire, together with his office and its contents, in October, 1851. Manuel Jimeno, who was for many years, and during the whole period of Gov. Micheltorena's administration, secretary of the departmental government of California, deposes, that in the year 1843 or 1844, a petition by John A. Sutter, in the name of his son, was presented to the governor for an extension of land, which was referred to the witness for his report, to which he replied, that there was no objection. The governor then stated that it was very well, and it remained to be matured on another occasion. There was a map attached to the petition; the petition was not granted, so far as the witness was informed.

Francisco Arce, who was first clerk in the office of Secretary of State, testifies, that at the request of Capt. Sutter he drew up for him a petition for the Sobrante or overplus of the grant previously made to him by Gov. Alvarado for the settlement of twelve families, which was passed to the governor, and went through all the customary steps, was returned to the office of the secretary again, and so, he believes, was delivered to Capt. Sutter.

Juan Castenèda, who was aid-de-camp to Gov. Micheltorena, and whose name appears on the paper as secretary ad interim, testifies that he knows a petition was presented to the governor by Capt. Sutter in behalf of himself and his son, for a grant of land, in the month of October, 1844; that the said Sutter had previously received a grant for the place called New Helvetia, which he represented as having distributed among his colonists, and he petitioned for a grant of the overplus or Sobrante to himself and son, which was granted to them, and the title executed about the month of January or February, 1845; that he drew the deed himself, and it was executed by Governor Micheltorena in his presence at Santa Barbara, the governor having left Monterey a short time before for Los Angeles in consequence of the civil commotions. He further swears that the paper marked C, and filed in the case, he believes to be a true copy of the title drawn up by him and executed by the governor as above stated.

Henry L. Ford testifies, that he was in Santa Barbara in the latter part of January and the early part of February, 1845, in the capacity of a soldier under Capt. Sutter; that shortly before they left Santa Barbara, say from the 6th to the 10th of February, 1845, Gen'l Micheltorena made a speech to the foreign volunteers, composed of Americans,

English, Irish, and others, in which he said he granted to Capt. Sutter all the lands he had claimed or asked for in the Sacramento valley, and also that he had made grants of all the lands in said valley in which he had previously issued decrees of permission to occupy. He further states, that in April, 1845, he had returned to New Helvetia; Capt. Sutter at his request showed him the general grant for the lands in the valley, and also the grant of the Sobrante to himself and son, both of which were signed by Governor Micheltorena; that he read said papers at the time, and that, to the best of his recollection, the paper marked Exhibit C is a true copy of said grant; that at the same time he was shown a map of the lands of New Helvetia, and so expressed on the map; that the map marked Exhibit B, and filed in the case, is, to the best of his recollection, a copy of the map so shown him.

This evidence establishes beyond a rational doubt the due execution of the grant by the governor, its delivery to the grantee, John A. Sutter, sr., and the substantial correctness of the papers marked C annexed to the petition of the claimant, as copies of said original title papers.

Having shown, in considering the other branch of the case, that the boundaries, within which the particular tract granted is to be located, are defined with sufficient certainty to obviate any difficulty in that respect, we might here, under the ruling of the Supreme Court in its decisions before referred to, terminate the case by entering a decree in favor of the claimant; but some objections have been urged by the government against that portion of the claim covered by the grant now under consideration which do not come within the purview of those decisions, and which therefore must be disposed of. The first of these objections to which we shall advert, is, that Capt. Sutter having already acquired eleven square leagues of land by virtue of the grant of the 18th of June, 1841, he was by 12th article of the law of August, 1824, precluded from any further acquisition by grant from the government. We have already shown, in a former part of this opinion, that the first grant was an empresario grant, under the regulation of November, 1828; and a careful examination of the law of August, 1824, satisfies us that the limitation contained in the 12th article was not intended to apply to grants of that description, but was confined in its operation to those made to individuals and families. The language of the article is peculiar, and literally translated is as follows: "It shall not be permitted to unite in one hand as property more than one square league of irrigated land, four of temporal," (subject to the seasons,) "and six of pasturage, making eleven altogether." Now we know from the practice in Texas and other parts of Mexico that empresario grants and contracts were limited as to quantity, and were governed by the number of families which it was proposed to introduce and colonize.

From the nature of those contracts it never was contemplated or intended, even where the fee was vested in the empresario, that the land should remain as his exclusive property, but that the larger portion, if not the whole, should be distributed among his colonists; and we accordingly find, from the testimony in this case, that the second grant

was made to Capt. Sutter and his son, upon the representation that the lands previously granted had been so distributed. We learn also, from the evidence, that a large portion of them was so distributed, and the grant recites that the inquiries and investigations required by the laws and regulations were duly made. If, therefore, it was necessary to ascertain the fact of such distribution in order to give validity to the second grant, we are bound to presume that the governor was duly informed on that point before he issued it. But if there is any remaining doubt that the restriction referred to does not apply to empresario grants, we think it is entirely removed by the law of the 12th of March, 1828, in relation to the mode of acquiring property by foreigners. Smith's Civil Law of Spain and Mexico, page 247. The 8th article of that law declares the law of the 18th of August, 1824, to be in full force, and the 10th article provides that a non-naturalized impresario shall not reserve to himself more than sixteen square leagues.

Now, it is hardly to be presumed that the Mexican government would be more liberal to a non-naturalized foreigner than *than* to her own native or naturalized citizens; and adopting the rule of construction laid down by the Supreme Court in the case of Fremont, on another point, the provision above cited "necessarily implies that, with regard to the latter, no limitation as to quantity existed. But this grant differs in another essential particular from the ordinary grants made under the colonization laws, and is based upon other considerations—those *those* of occupation or cultivation. It purports upon its face to be made in consideration of the services already rendered, and which were being then rendered by Capt. Sutter.

This recital in the grant, taken in connection with the oral testimony in the case, would, in contemplation of law, constitute the transaction or a purchase for a valuable consideration as to the grantee, John A. Sutter, sr. John Bidwell testifies that the said Sutter was a captain in the Mexican army, and was for several years in charge of the frontier, and kept it quiet; and had, from time to time, advised the government of its conditions by sending couriers to Monterey *of* Los Angeles; that this had been done at his own expense, and that the ground of his application for the second grant was in consideration of these services; and also that he had fulfilled the conditions of the first grant. Witness was in the employment of Capt. Sutter from 1841 to 1846, and is not aware that he ever received any compensation from the government for his said services, except said grant of land.

P. B. Reading testifies that Capt. Sutter held the office of alcalde and captain in the Mexican service under Gov. Micheltorena, and that in the winter of 1844–'45, he organized, by the governor's orders, a company of foreigners, principally Americans, and with them and Indians, to the number of about one hundred, he marched to join Governor Micheltorena in actual service, for the purpose of suppressing an insurrection of the Californians, who were in arms against his authority, and with a view of driving him from the country. We also learn, from the deposition of Henry L. Ford, that the grant was made while Capt.

Sutter was actually engaged in the military expedition above referred to. This evidence indicates clearly the nature and character of the services in consideration of which the grant was made, and is sufficient to constitute Capt. Sutter a purchaser for a pecuniary consideration to the extent of his interest in it. This, according to the ruling of the commission, in case No. 479, for the mission of Buenaventura, would take the case out of the operation of the 12th section of the law of August, 1824, and relieve the grant from the restriction imposed by it, even if it were otherwise subject to its provisions.

The second objection is, that John A. Sutter, jr., being a minor and non-resident, was incapable of acquiring lands under the laws of Mexico.

The fact that he was a minor and non-resident at the time of the grant, is fully established by the testimony, but we have been unable to find any provision of the Mexican law prohibiting grants to minors; indeed the contrary may be inferred from the 16th article of the regulation of November 21st, 1828, which authorizes grants to be made of the unappropriated lands to the children of the adjoining proprietors, without any restriction as to minority. With regard to residence of John A. Sutter, jr., we think that it is very clear that the 15th section of the law of August, 1824, cited by the law agent, does not apply in the present case. The Mexican law prescribing rules for giving letters of naturalization provides, in the 8th article, that the naturalization of the husband and head of the family shall be considered as naturalizing the wife, and the minor or unemancipated children; and again, in the 9th article, it declares that children of Mexican citizens, born out of republic, shall be considered as born in it. These provisions conferred on John A. Sutter, jr., the same rights of citizenship which were possessed by his father; and under the rule which obtains both in the civil and common law, making the domicil of the father, in contemplation of law, the domicil of the minor children, he was as capable of acquiring real property as any other citizen of the republic. This conclusion is strongly sustained by the evidence of Manuel Jimeno on this point.

In the case of Fremont, before cited, the Supreme Court says: "When there are no published reports of judicial decisions which show the received construction of a statute, and the powers exercised under it by the tribunals or officers of the government, it is often necessary to seek information from other authentic sources, such as the record of official acts, the practice of the different tribunals and public authorities; and it may sometimes be necessary to seek information from individuals, whose official position and pursuits have given them opportunities of acquiring knowledge." These rules are particularly applicable to California, where any thing like a regularly organized judiciary, or a permanent record of judicial decisions, was almost entirely unknown.

The witness Jimeno was for a long series of years the secretary of the departmental government of California, and the officer to whom were referred all questions, under the regulation of 1828, as to the capacity of the land to be granted, or of the grantee to take. He is univer-

sally admitted to have been a man of intelligence, as well informed on all subjects connected with his official duties. We learn from his deposition that the petition of Capt. Sutter, in the name of his son, was referred by the governor to him for the necessary information, and that he reported that there was no objection. Had there been any legal obstacle to a grant to John A. Sutter, jr., on the score of alienage or non-residence, we are bound to presume that Jimeno would have known it, and would have so stated in his report to the governor.

His failure to do so, and the subsequent action of the governor in making the grant, is conclusive that no such obstacle existed, and that the grant was made in conformity with the law.

The interest of John A. Sutter, jr., in the premises, appears to have been transferred by proper legal conveyance to the present claimant.

After a careful and laborious examination of all questions presented in the case, and apply the rules of decision laid down for our governance in the act of Congress of the 3d of March, 1851, as expounded in the recent decisions of the Supreme Court, we can come to no other conclusion than that the claimant is entitled to a confirmation to the full extent of the lands claimed, embracing thirty-three square leagues, to be located according to the calls of the grant, within the limits described in them and delineated on the map marked B, and filed as an exhibit to the claimant's petition, to which effect a decree will be entered.

Decree.

JOHN A. SUTTER
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the petitioner is valid, and it is therefore decreed that the same be confirmed.

The land of which confirmation is made is situated on the American, Sacramento and Feather rivers, and is known by the name of New Helvetia, being the same which was granted to the said John A. Sutter, by grant duly executed by Gov. Juan B. Alvarado, on the 18th of June, 1841, and by a grant from Governor Manuel Micheltorena to the said John A. Sutter, and his son John A. Sutter, dated February 5th, 1845: the first for eleven square leagues of land, as exhibited on the sketch annexed to the proceedings, and the second for twenty-two square leagues of the Sobrante or surplus of land within his rancho, named New Helvetia, as laid down on the map which accompanies the grant; the said land to be located according to the calls of the respective grants, as described and explained in the deposition of John J. Vioget, filed in the case, and within the following limits, to wit: On the south by a line drawn due east from the Sacramento river, so as to touch the most southerly point of a pond or laguna situated near said river, and about five miles south of the American river, as represented on the map filed in the case and marked B, and B. P. L. exhibit to

the deposition of Juan B. Alvarado, March 15, 1855, which line is also marked on said map, lindero latitude norte 38° 49′ 32″; on the north by a line drawn due east from the Sacramento river to the southern base of the mountains known as the Buttes, and represented on the said map by the name of Los Tres Picos; and from thence until it intersects the eastern boundary of the tract as represented on said map, and described in the grant and in the depositions of the said Vioget; on the west by the said river of Sacramento, and on the east by the margins of Feather river inclusive. For more particular description, reference to be had to the copies of the grants filed and proved in the case, marked A and C, to the map marked B, and to the depositions of John J. Vioget and Juan B. Alvarado, all of which are filed among the papers in the case.

R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office May 15th, 1855.

GEO. FISHER, *Sec'y.*

Recorded in Record of Decisions, vol. 3, page 32.
GEO. FISHER, *Sec'y.*

Order.

And it appearing to the satisfaction of the board, that the lands hereby adjudicated are situated in the northern district of California, it is hereby ordered, that the two transcripts of the proceedings and decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary; one of which transcripts shall be filed with the clerk of the United States district court for the northern judicial district of California, and the other be transmitted to the Attorney General of the United States.

Motion of U. S. Associate Law Agent.

JOHN A. SUTTER
vs.
THE UNITED STATES. } No. 92.

Motion is hereby made to amend the decree entered in the aforesaid case, by striking out all the descriptive part thereof, and inserting as a description of the land confirmed, the words of description contained in the grants with reference the maps and depositions filed in the case, explanatory of such words.

LOUIS BLANDING,
Asso. Law Agent.

August 21, 1855.

Filed in office Aug. 21, 1855.

GEO. FISHER, *Sec'y.*

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle private land claims in the State of Cal'a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing two hundred and twenty-one pages, numbered from 1 to 221, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 92 on the docket of the said board, wherein John A. Sutter is the claimant, against the United States, for the place known by the name of "New Helvetia."

In testimony whereof, I hereunto set my hand and affix my private seal (not having a seal of office) at San Francisco, California, this eighth day of November, A. D. 1855, and of the independence of the United States of America the eightieth.

[SEAL]

GEO. FISHER, *Sec'y.*

Notice of Appeal in Case No. 92.

OFFICE OF THE ATTORNEY GENERAL OF THE U. STATES,
Washington, 31st December, 1855.

92.—"New Helvetia."—John A. Sutter, Claimant.

You will please take notice, that in the above case decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 3d day of December, 1855, the appeal in the district court of the United States for the northern district of California will be prosecuted by the United States.

C. CUSHING, *Attorney General.*

Endorsed: Filed February 1st, 1856.

JOHN A. MONROE, *Clerk.*
Pr. W. H. CHEVERS, *Deputy.*

Petition.

To the Honorable District Court of the United States for the northern district of California.

THE UNITED STATES
vs.
JOHN A. SUTTER. } No. 319.

The petitioner of the United States, by their attorney, represents, that this cause is an *appreciation* for a review of the decision of the board of commissioners, whereby the claim of said appellee was confirmed; that a transcript of the record of this case was filed in this court on the seventh day of November, and that a notice of appeal was filed on the 1st day of February, 1856; and that the land claimed lies

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in this district. That the said claim is invalid. Wherefore, the appellants pray that the said decision of the board be reversed, and that this court decree the said title to be invalid.

Respectfully, &c.,

A. GLASSELL,
Ass't Counsel to U. S. Att'y.

Endorsed: Filed February 29, 1856.

JOHN A. MONROE, *Clerk.*
Pr. W. H. CHEVERS, *Deputy.*

Answer.

In the United States District Court northern district of California.

Appeal from the U. S. Land Commission for the State of California, organized under the act of Congress of March 3d, 1851.

THE UNITED STATES, Appellants,
vs.
JOHN A. SUTTER, Appellee. } No. 319.

And now comes the said appellee, by his attorney, and for answer to the petition in this case by the appellants filed, says, that there is no error in the proceedings and judgment of said board of commissioners in this case had; and this the said appellee prays may be inquired of by the court.

E. V. HOWARD, *for Appellee.*

Endorsed: Filed March 1st, 1856.

JOHN A. MONROE, *Clerk.*

Depositions of Hannah Jane Hopper, Tod Robinson, Wm. Mace, James A. Fox, Samuel Norris, Eli Goodale, C. M. Cornell, John Bigler, and F. S. Lardner, witnesses on behalf of the United States.

UNITED STATES DISTRICT COURT,
Northern district of California.

THE UNITED STATES
vs.
JOHN A. SUTTER.

SACRAMENTO, CAL'A, *March 21st*, 1856.

On this day before me, Geo. Pen Johnston, a commissioner of the United States for the districts of California, duly authorized to administer oaths, &c., &c., came Hannah Jane Hopper, Tod Robinson, Wm. Mace, James A. Fox, Samuel Norris, and Eli Goodale, witness produced on behalf of the United States in case No. 319, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 92 on the docket of the said board of commissioners, and were duly sworn and respectively testified, as follows:

Present J. H. McKune, former law agent, before the board of land commissioners, acting as United States district attorney, on behalf of the United States, and Lewis Sanders, jr., on behalf of claimant.

Deposition of Hannah Jane Hopper.

Hannah Jane Hopper, being duly sworn, deposes and says as follows:

Question by Att'y for U. S.

What is your name, age, and place of residence?

My name is Hannah Jane Hopper, my age is forty-nine years, and I reside about two miles from Sacramento, on the I street road.

[Objection here offered by the att'y for the claimant to the examination of this witness, on the ground that her name is not included in the notice served, and the notice served is offered to be attached to the deposition, and is hereto annexed marked Exhibit A.—G. P. J.]

HANNAH JANE HOPPER.
Her
⋈
mark.

Sworn to and subscribed before me this 21st day of March, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Copy of Notice.

In the United States District Court for the northern district of California.

THE UNITED STATES
vs.
JOHN A. SUTTER. } No. 319.

Appeal from the U. S. land commission.—V. E. Howard, att'y for defendant.

Take notice that on the 21st day of March, 1856, at the hour of 12 M. of the clock, at the office of Bowie and Griffith, in Read's building, corner of J & 2d streets, in the city of Sacramento, in said State, before Geo. Pen Johnston, a commissioner of said court, duly appointed and qualified, I shall proceed to take the depositions of John Bigler, Harvey, Jesse Morrill, Eli Goodale, Wm. Carley, F. S. Lardner, E. Gay, —— Ellison, C. M. Cornell, —— Mace, T. Robinson, S. Cross, S. Norris, and others, to be read in evidence on the trial of the above entitled case on the part of the United States.

Respectfully,

J. H. McKUNE,
Att'y for Plaintiff.

Exhibit A.—G. P. J.

Deposition of Tod Robinson.

Tod Robinson, being duly sworn, deposes and says as follows:

Question by Att'y for the U. S.

What is your name, age, and place of residence?

My name is Tod Robinson; my age is forty-four years, and I reside at Sacramento city.

Are you acquainted with the general character of John S. Fowler for truth and veracity in the community where he resides? If yea, what is it, good or bad; and, judging from that public reputation, would you believe him on his oath?

I have known him personally for several years, and, so far as casual intercourse with him as a neighbor, and acting as a witness in cases in which I have been employed as a lawyer, enables me to judge of his general character for truth and veracity, I would believe him on his oath. I have never heard anything with regard to his reputation, within the limit of my knowledge of Mr. Fowler, as thus stated, which would induce me to disparage his word when under oath. I cannot say that I do know what his general character for truth and veracity in the community in which he resides.

Have you ever had any conversation with John S. Fowler as to his interest in, and ownership of, land claimed under John A. Sutter? If yea, state where, when, and under what circumstances.

I heard some eighteen months ago, or received the impression about that time, from some cause or source, that John S. Fowler owned a block of town lots in Sacramento adjacent to one I own; and about twelve months ago, or perhaps ten months ago, when in the vicinity of the block, I asked him if he owned it; he answered that he was the owner, and I sought to negotiate with him for its purchase. I was under the impression that Fowler was the owner of a considerable amount of the Sutter property. The block of which I have spoken is within what is claimed as the Sutter grant.

Have you, from the nature of your business, been conversant with land titles in and near this city, (Sacramento;) if yea, when was the fact that John A. Sutter claimed land under a grant from Micheltorena, commonly called the Sobrante grant, first generally known? State whether any land, so far as you know, has been claimed in the courts of this county under such grant?

I am a lawyer, and necessarily conversant with land titles in and near this city, having practised my profession here for a number of years. I cannot state when the fact that John A. Sutter claimed land under a grant from Micheltorena, commonly called the Sobrante grant, was first generally known. I first heard of the Sobrante grant in the spring or summer of 1851. I had made a decision, acting as district judge, with regard to the Sutter claim, and subsequently heard of the Sobrante grant, and was anxious to see it to ascertain whether there was any thing in the Sobrante grant which conflicted with my decision, not having heard of it at the time the decision was made; and learn-

ing that it was in the hands of Fowler or Col. Zabriskie, I asked one or the other of them for it, and learned that it had been destroyed in a certain fire previous to that time, which consumed Mr. Fowler's and Col. Zabriskie's offices. I do not know of any lands which have been claimed in the courts of this county under the Sobrante grant. I have lived here from December, 1850, up to this time.

Did you, as judge of the 6th judicial district of this State, have a case before you involving the Sutter claim; if yea, state what grant it was claimed under, and whether any 22 leagues grant, within your knowledge, has ever been produced in that court?

I did have such a case. I think it was claimed under the Alvarado; in fact, I knew it was *it was* the 11 league grant. No 22 league grant has ever been produced in that court within my knowledge. The case to which I refer was submitted to me in January or February, 1851. From my position as judge at that time, I was not apt to hear of grants and land titles unless they were brought before me. I was surprised, when I heard of the Sobrante grant, that I had not heard of it before in connection with the case which I had decided.

[The att'y for claimant here objects to the whole of the foregoing deposition, questions, and answers, except the first interrogatory and answer.]

Cross-examination.—Questions by Att'y for the Claimant.

Have you ever seen the deed, or a copy of the deed, or the record of the deed, from John A. Sutter, sr., to John A. Sutter, jr., dated in October, 1848; if so, state whether the Micheltorena and Alvarado grants are not mentioned in that deed?

I have seen a copy of a deed purporting to convey the whole of the property of John A. Sutter, sr., to John A. Sutter, jr., but I do not remember its contents with reference to the Micheltorena and Alvarado grants.

TOD ROBINSON.

Sworn and subscribed to before me, this 21st day of March, 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Deposition of Wm. Mace.

Wm. Mace, being duly sworn, deposes and says as follows:

Questions by Att'y for the U. S.

What is your name, age, and place of residence?

[The att'y for the claimant objects to the testimony of this witness, and asserts that the witness is an occupant of the land involved in this suit, and claims adversely to the claimant.]

My name is Wm. Mace; my age is twenty-six years; and I now reside in Brighton township, Sacramento co., Cal'a.

Did you ever have a conversation with John S. Fowler, wherein he

spoke of his interest in the land claimed by John A. Sutter; if yea, state when, where, and what that conversation was?

I have had a conversation with John S. Fowler, wherein he spoke of his interest in the land claimed by John A. Sutter. In the summer or spring of 1854, it was reported that a telegraphic despatch had been received by Mayor Johnson, to the effect that Sutter's claim had been confirmed. I started out to ascertain the facts in relation to the case, and met with Mr. Fowler near the Magnolia, in this city. In conversation with him at that time, I told him I was interested in about 160 acres of land in the Sutter claim, and was anxious to have it decided; he very significantly replied, "I have got a small interest, too." I asked him if the land he was interested in was not out by the Oak Hill House, which is about three miles from the city. He said "yes, and reaches way below Sutterville; I suppose there are two hundred settlers on the land that I am interested in." There was nothing said more about the title, than that he remarked he did not think it could be confirmed, because it had only been submitted about two weeks previous to that time. The report of the confirmation of the Sutter grant at that time proved to be false.

Are you acquainted with the general character of John S. Fowler, for truth and veracity, in the community where he resides; if yea, what is it, good or bad; and, judging from that public reputation, would you believe him on his oath?

I have never heard Mr. Fowler's character questioned on any subject, excepting in relation to the Sutter claim and his interest in it; all I know with reference to Mr. Fowler's general character is in connection with that claim, and that general character is bad. I believe Mr. Fowler would tell the truth if it was his interest so to do; I believe he would not if it was not his interest so to do.

Cross-examination.—Questions by Att'y for the Claimant.

How long have you resided in this State, and where, and what has been your business?

I have lived in California between six and seven years; the two first years of my residence I lived in the mines; for something more than a year and a half, immediately afterwards, I was connected with the police department of this city; immediately after that, for about six months, I was on a farm in Brighton township; for nearly one year then afterwards, I was keeper of *of* the county prison in this county; the balance of the time, until now, I have resided on a farm in Brighton township, in this county.

Is the farm on which you reside within the limits of the Sutter claim, or within the lines of that claim as surveyed?

I believe it is within the lines of the survey as made by Von Smidt.

Do you live upon that land, or did you settle upon it claiming under a title to it derived from John A. Sutter, the claimant in this case?

I went upon it as a settler in the first place; before I went upon it to live, I got permission through my attorney, of Mr. Gelston, to occupy

and improve said land in any manner I might think proper; that permission was granted in 1853. Judge McGrew, my attorney, wrote to Mr. Gelston on the subject, and Mr. Gelston replied, granting me the permission; so my attorney told me, and I told him to preserve the letter, for it may be eventually wanted as evidence. I never saw the letter. Now I have sold all my right, title and interest; have received the purchase money, and next Thursday I am to give possession of the place to the purchaser, Mr. Kelly, of San Francisco, and Mr. McCloy, of Sacramento city. I have already executed and acknowledged the deed to the place, and delivered it; it is a bona fide sale.

When you went upon that tract of land, did you not know that the place was within the boundaries of the land claimed by Capt. Sutter?

I supposed it to be land within the Sutter claim.

Did you not apply to a grantee of John A. Sutter, no longer than last week, to purchase the Sutter title to that land?

I applied to Mr. Presly Dunlap, who claims a portion of the Sutter land, to know on what conditions I could purchase it, in case it should prove to be his land.

Upon what source of belief do you found your opinion of the general character of John S. Fowler for truth and veracity?

I don't speak of his general character any further than in relation to the Sutter claim; I have never had any prejudices against the claim; I have been rather in favor of it. In a measure, but not altogether, I have formed my opinion of the general character of John S. Fowler for truth and veracity from conversations with settlers on the claim, and my opinion has been partly made up from the contradiction which exists between the statements made me by Fowler, and the facts as disclosed in the proceedings before the board of land commissioners. Fowler never offered to sell me any land in the Sutter claim.

[The att'y for the claimant objects to the whole of the foregoing deposition.]

WM. MACE.

Sworn and subscribed before me, this 21st day of March, A. D. 1856.

GEO. PEN JOHNSON,
U. S. Commissioner.

Examination of Hannah J. Hopper.

Examination of Hannah J. Hopper resumed, she being recalled.

Questions by Att'y for the U. S.

Are you acquainted with John A. Sutter, the claimant in this case; if yea, how long have you known him?

I know John A. Sutter, and have known him since the fall or winter of 1849.

Did you ever have a conversation with him about his claim to land on the Sacramento river? If yea, state what that conversation was about, about how many times you conversed with him about it, and the substance of his statements.

I have conversed with him about his claim to land on the Sacramento river. When I was living here in this city, one of the first settlers here, I was stating to him that I was not satisfied, and then he advised me to go out and settle either on the American river or in the white-oak timber, for the purpose of making me a farm there, as I had three sons then living. I told him I was dubious about it, because I had once before settled in a new country, in Illinois, and I was afraid the land might be taken away from me, and he told me not to be afraid; to write to him, and I should not be pestered; and told me if I should be disturbed by any person, to write to him to the Hock Farm; he said that he had once thought of settling that land himself, but had given it up, and that he had sold out the fort, which was all I heard him claim at that time. I asked him if he did not own any of that land about there, and he said he did not; that he had gone and located himself at the Hock Farm. He then told me the reason why he did not own any of that land; that he had started a man once to get him a title to the land, but that he had been disappointed, because of the difficulties and battles of Fremont down about Monterey, or somewhere there. He did not tell me anything about the quantity of land he was trying to get at the time spoken of, but said that he tried to get it about the time this gold (or, as he expressed it, yellow) fever broke out; then he went on to tell me, that he didn't know why this land should not be made *as* present to us in California, just as they had made presents of land in Oregon; and then he said if it was not made a present to us, that it would come in by pre-emption to us, who had settled on it. I talked with him about this subject four or five times, that I can remember. What I have related is about the substance of his different conversations with me.

Have you ever heard John S. Fowler say whether he had any interest in the Sutter claim before or after its confirmation, and when and where, and what did he tell you, if anything?

I had a trial in court in Sacramento in the summer of 1854, and he, John S. Fowler, came to me and asked me if I wanted another witness, for he said he had an interest in the land there, any how, out where I lived; and I turned and left him.

Cross-examination.—Questions by the Att'y for the Claimant.

When did you arrive in the State; where have you resided since, and what has been your business?

That would be hard for me to tell. I arrived in this State in 1849; I lived in Sacramento from June, 1849, to January, 1850, then I left the city and went into the county, at the request and by the advice of old Gen'l Sutter; I settled first upon the American river, and remained there until May, 1850, when I was forced to leave there by my husband, and then went upon the same place I now reside, where I have resided from then until now; my business has been attending to my household at home, and riding for a midwife; part of the time I have been hired out to work for my living, and to support my little family.

Where is the farm on which you now live located; is it within the limits of the Sutter claim?

The speculators tell me it is within the limits of the Sutter claim; the farm is right east of Mr. Keefer, and west of Mr. Collins; it is about a mile from Sutter's fort, and on the I street road.

How much have you paid or become liable to pay to attorneys, or to the settlers' league, for the purpose of defending this suit in the U. S. district court?

I can't tell you exactly without seeing my son, who is living with me; he has put it down, and whatever he does is agreeable to me. I think my son has told me that he paid twenty dollars for him and me.

When you went on to the place you now live, was there or was there not a house or tent on it, of which you took possession?

There was no house on it at all; there was a small tent, which my son-in-law bought from a man by the name of Holloway, on account of my being driven away from the place on the American river, where I before lived; my son-in-law told me to occupy the tent, which I did, and lived in that tent until I got me a house built, which house stands there yet. Where I first settled on the American river is about three quarters of a mile from where I now live, and in a northeast direction, and it is about a mile and a half northeast of the fort; my husband had left me three years before I came to this county, and had broken me up three times, taking my property and treating me badly, and his bad treatment made me leave him on the place on the American river; all this was before I got a bill of divorce from him.

Do you claim the property on which you now live under a title adverse to the claimant in this case; and if so, what title is it?

I claim under a settler's title. Genl. Sutter has never been on my place in the county while I was there; I have only seen him in this city.

Direct Examination resumed.—Questions by Att'y for the U. S.

In your conversation with Genl. Sutter with reference to a grant about which he was disappointed, did he speak of the grant to "Hock Farm," or of the grant covering this city, and the land about here?

It was about this grant he got disappointed.

[The att'y for claimant objects to the whole of the foregoing deposition.]

her
HANNAH JANE ⋈ HOPPER.
mark.

Sworn to and subscribed before me, this 21st day of March, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Deposition of James A. Fox.

James A. Fox being duly sworn, deposes and says as follows:

Question by the Att'y for the U. S.

What is your name, age, and place of residence?

My name is James A. Fox; I am thirty-five years of age, and live in the town of Sutter, Sacramento county, California.

Are you acquainted with the general character of John S. Fowler for truth and veracity; if yea, what is it, good or bad, in the community where he resides; and judging from that public reputation, would you believe him on his oath?

I am acquainted with the general character of John S. Fowler, for truth and veracity, to some extent; I consider it rather bad from what I know, and from what I have heard, judging from that public reputation, I would not believe him on his oath.

Cross-examination.—Questions by Att'y for the Claimant.

Are you a member, or have you ever been a member of the settlers' league of this county?

I am not, and never have been; I have lived in Sutter since three years ago last December, and am engaged in a small dairy business; I claim the land on which I now live as a settler; I don't know whether the land on which I live is within the limits of the Sutter grant, as surveyed by Von Smidt, or Vioget, or not; I was not present when Vioget made any survey of that land at any time. I have no doubt but that the land on which is within the limits of the Sutter claim. I live on the land, and claim it adversely to the claim of John A. Sutter; by the confirmation of the Sutter claim, I do not know or think I would gain or lose a cent, as I think I have sold out. I claim about 152 acres. I expect to get for my dairy, horses, wagon, &c., the sum of $4,250. The land I consider worth about the value of the improvements on it; the land, with a good title to it, I consider worth about ten dollars per acre. I have never settled on any other piece of land within the Sutter claim.

What are the sources of your belief or information as to the general character of John S. Fowler for truth and veracity?

I have heard people with whom I was acquainted, and people whom I did not know, and do not now remember, say that he was not a man of truth and veracity; and I say the same from my own personal knowledge. My personal knowledge grows out of my connection with a suit, in which L. Sanders, jr., was plaintiff and I was one of the defendants. Mr. Fowler swore that some land which I occupied was worth sixty dollars a year ground-rent per acre in a state of nature, and some other witnesses in the same case swore it was not worth five dollars a year per acre—and I know it was not worth three dollars a year per acre to me; and part of the same land has since been rented for five dollars per annum per acre. Fowler swore that land was grass land—that some, or a bigger part of it, was mowing land; and while I have occupied it, it never would pay me to mow it—there were more weeds than there was grass; it would not pay me to mow it. And Fowler also swore that he knew the location of this tract that Sanders sued on, 55 acres. I saw Mr. Sanders and his son, and Mr. Gillespie, the

surveyor, and some others whose names I don't remember; but Mr. Fowler I did not see there at all. I knew Mr. Fowler at this time; these other men that I have mentioned I did not have much acquaintance with. He, Fowler, said the location of this land was within eighty rods of land that Sutter cultivated, when I don't think it could be touched within a mile. I have heard men, whom I do not know to live on the Sutter claim, or to be speculators, but whom I do not now know or remember, say, and I have heard Mr. Foster, (a co-defendant in the suit of which I have spoken,) Mr. Brockway, and Mr. Colly, that Fowler's character for truth and veracity was a bad one; and I have heard public speakers say so, but I suppose they wanted office. Mr. Foster and Mr. Brockway I know to be settlers; and I have heard that Mr. Colly is also a settler. I have not formed my opinion of Fowler's truth and veracity from his testimony in the suit of Sanders against me, alone. I don't think I am prejudiced against Mr. Fowler. In that suit the plaintiff recovered seventy-five dollars against the defendants.

[The att'y for the claimant objects to the whole of the foregoing deposition on all legal grounds.]

JAS. A. FOX.

Sworn to and subscribed before me, this 21st day of March, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Deposition of Samuel Norris.

Samuel Norris, being duly sworn, deposes and says as follows:

Questions by Att'y for the U. S.

What is your name, age, and place of residence?

My name is Samuel Norris; I am thirty-three years of age, and reside in Sacramento county, Cal'a.

Did you ever have a conversation with John A. Sutter, in 1844, as to the extent and location of the land claimed by him; if yea, when was it, and what did Sutter claim at that time?

I had such a conversation in the spring of 1844, I think, and he claimed from some distance below Sacramento city up to the Buttes, then east to the foot hills, then south down to the place of beginning, down below here, somewhere—a place this side of the Cosumnes river.

When was the fort commonly called Sutter's fort built?

I don't know; they were working on it when I first knew it in 1844; it was not completed then.

At the time you first came to Sutter's fort in what condition was "Hock Farm," and for what purpose and what induced Sutter to build a fort when he did?

When I first came to Sutter's fort I passed by "Hock Farm" shortly

afterwards; there was then one good sized house and several smaller houses, grass huts, &c. I don't know whether the large adobe house was finished or not; there was a "Kanaka" by the name of Harry living there in charge of the place. I don't know what induced Sutter to build a fort when he did.

Cross-examination.—Questions by the Att'y for the Claimant.

Did Sutter, or did he not, have possession of the fort and the surrounding country for the purposes of grazing and agriculture from the time you came to the country up to 1848 or 1849; and was it not generally admitted by the settlers that the land belonged to him?

As far as I know he had possession of the country described in the manner described up to 1848, when he sold it to his son. I was not here in the years 1845 and 1846, and know nothing of Sutter's possession of the country during those years.

SAMUEL NORRIS.

Sworn to and subscribed before me this 21st day of March, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Deposition of Eli Goodale.

Eli Goodale, being duly sworn, deposes and says as follows:

Questions by the Att'y for the U. S.

What is your name, age, and place of residence?

My name is Eli Goodale; my age is thirty-three years; and I reside in Sacramento city, Cal'a.

Did you ever hear a conversation with John S. Fowler, a witness before the board of land commissioners in this case, relative to any interest he had in the claim; if yea, when, where, with whom? And state the substance of that conversation.

I have heard, or did hear, such a conversation, I think, about two years ago in this city; I had the conversation with him in person. I asked him if he had any lots to sell between D and G streets, and 3d and 6th streets, in this city; he said he thought he had; that he and Gillespie, and I think he said others, had bought Sutter's interest, as I understood him, in the city of Sacramento; that he had not his memorandum with him, and did not know exactly where the lots laid, but that they were scattered all over the city. And at another time, after the time that the news came (during the summer of the year that Johnson was mayor of the city of Sacramento—that is, the summer of 1854) that Gen'l Sutter's claim against the government for furnishing beef, &c., to Fremont, had been allowed, I met Fowler somewhere on I street, between 2d and 3d, and I asked him if he had looked to see what interest he had in the Sutter claim; he said he owned an undivided interest the property with Gillespie and others, and wished me to make him an offer for his interest. I told him I would examine

the record, and see him again. I never have examined the records fully; I have some. And subsequently to all this, at the time the telegraphic despatch was received of the confirmation of Sutter's title or grant, I was standing on the corner of 2d street, near Hastings' bank, waiting for an extra to come out containing the proceedings before the board of land commissioners. The extra arrived, and after reading it, I heard Mr. Fowler say he had been going ragged or naked, and living on shit for the last five years; and that the squatters (I think he termed them "land pirates," if I recollect right) had been living on his land, riding in their carriages; and now that the Sutter title was confirmed, he thought times would change with him, and he should be able to do the same himself; and then he started towards the Magnolia and said, "Let's go and take a drink," or some of the crowd said so, and that was the last I saw of him at that time. I don't think I have had any conversation with Mr. Fowler about lands since that time. I may have had, but don't remember it.

How much of the land claimed in this case is subject to overflow from the swelling and currents of the river? State your means of knowledge.

There are but a few rods of the land in the limits of the city of Sacramento, not exceeding twenty acres, which are not subject to overflow; between this city and Sutterville the greater portion of the land is subject to overflow of from two to eight feet; about the balance of the land outside of the city, claimed in the grant, I know nothing. My means of knowledge consist of the fact that I have lived in the city since 1850, (about the first of August, 1850.) I have been engaged in the hog business. At two freshets in this city I had from two to four hundred head of hogs, and they were running at large; and as the water rose I was obliged to pick them up in boats from the highest points of land, and compelled to boat the feed of said hogs through the streets of Sacramento city; and from having to wade through the streets, being upset frequently, and similar accidents and experience, I have had, I think, a pretty good chance of judging. There has been no year since 1850 that a good share of the city would not have been overflowed had it not been protected by the levee.

How much higher did the waters of the river Sacramento, at the city of Sacramento, rise in the winter of 1853 and 1854, than in the winter 1854 and 1855? And state how far up and down the river Sacramento does the land overflow by the swelling and current of the river.

The waters rose 22 inches higher at the city of Sacramento in the winter of 1853 and 1854, than they did in the winter of 1854 and 1855. I only know that I had a ranch four or five miles up the river Sacramento some two years ago, and the waters rose so high up that far, that I travelled to it in a sail-boat. All I know about the overflow down the river, is what I have told as far down as Sutterville.

[The attorney for the claimant objects to the whole of the foregoing deposition on all legal grounds.]

Cross-examination.—Questions by the Att'y for the Claimant.

How long have you resided in this State; where have you resided, and what is, and has been, your business?

I have resided in this State since about the early part of July, 1850. I stopped about two weeks in the mines when I first came here. Since I came from the mines I have resided in Sacramento city, the most of the time between D and E, 5th and 6th streets, and have been engaged in all kinds of business, most. I first started an auction store in this city, in 1850. The next business I went into was that of selling newspapers, posting bills, ringing bells, &c.; and then I went into the hog business about 1851, and continued it until last year. Since then I have been engaged as city pound-master, and have done, under contract with the city, some $18,000 dollars' worth of grading. I first went on the lots on which I live as a settler; since then I have bought a portion of them under a Sutter title. I bought then lot No. 6, (during the year 1856,) between D and E, 5th and 6th streets; I do not know how many lots I own, adverse to the Sutter title. I hold altogether, in the city of Sacramento, an interest in nine blocks; the greater portion of the lots I own in the city of Sacramento I hold under tax titles. I do not belong to the settlers' league, and never did; I belong to the central committee of the settlers' party in this county, the object of which is to carry out the best interest of the State, in and for election purposes. I have never paid, and am not responsible for, "ary a red" to defend this suit. I live on the outside of what is called the I street or New Levee, north of Lake Sutter, between that and the American fork. There was no water covered the place where I now live in the year 1850, within my knowledge, as I think there was an old levee built around the place. I think that levee was built in the fall of 1850. There was a levee built around that portion of the city of Sacramento, north of I street, in the fall of 1850, and it did not break in the fall of 1851; there was no water high enough to overflow the highest part of that portion of the city in the year 1851. There was water high enough in the spring of 1855 to have overflowed two-thirds of the city of Sacramento, but for the levee; it lasted high enough to overflow about one-half of the city, for nearly two months; there has not been water high enough since that time to overflow the city, or any part of it. I never was in California before the year 1850.

Did you ever hear of Sutter's grant at New Helvetia or Sacramento, before you came to California?

I think I did hear that Sutter had a grant in California before I left the States; I never heard that Sacramento was in that grant. I have heard or did hear of Sutter's fort before I came to California. I owned a ranch four or five miles above Sacramento city, between the upper and lower Marysville road; I don't know, but I suppose it is about two miles from the Sacramento river, and about three miles from the American river; I owned the ranch about two or three year ago; I hold it under purchase from a settler, and have since given it away.

ELI GOODALE.

Sworn to and subscribed before me, this 21st day of March, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Examination of Samuel Norris.

Samuel Norris recalled, deposes, and says as follows:

Direct Examination resumed.—Questions by Att'y for the U. S.

What time did you settle in the vicinity of Sacramento city?

I have been permanently settled here since the year 1848, but have been here since 1847, at different times.

Did you, prior to the year 1846, know any lands within the limits claimed by John A. Sutter, as heretofore described by you, claimed or held adverse to the claim of Capt. Sutter?

I did not.

Did Eliab Grimes claim lands within the limits of Capt. Sutter's grant as described by you, under a Mexican grant to him, (Eliab Grimes,) prior to the year 1846; if yea, when, and where?

He did. He held a grant, dated in 1844, for ten leagues, located on the north side of the American river, commencing one league east of its mouth in the Sacramento river; then east three leagues; north three and ½ leagues; then west three leagues; then south to the place of beginning; being within the boundaries of the land claimed by Sutter, as I have heretofore described them.

Did Wm. A. Leidesdorff, prior to the year 1846, hold land within the limits described by you of Capt. Sutter's claim, under a Mexican title to him?

I do not know.

Did Grimes occupy the grant made to him prior to 1846?

He did; he occupied it in the spring of 1844, and since then.

Did you know John Sinclair prior to the year 1846; if so, where did he live?

I knew him first in 1844; he then lived on the south side of the American river, in a house now occupied by Colly, and was partner, and acting as agent of Eliab Grimes, in raising and trading in stock, &c.; he was agent for Eliab and Hiram Grimes in the management and care of their ranch or grant which I have heretofore described.

Did you know Allen Montgomery; if so, when, where did he live, and what was his business?

I did know him in 1847 or 1848, or one of those years; he lived about five miles from this city, on the south side of American river, near where Sutter's old mill-house stood. I believe he was a blacksmith by trade; I know of no connection between him and Sutter; I don't know whether he had any connection with Sutter or not; I don't know whether he worked at his trade or not; he had a wife and family living on the place; I had no particular acquaintance with him; only knew that he had a wife and family there; his wife is now living in San Francisco.

Did you know Wm. Daylor; if so, when, where, and what his business?

I did know him first in 1844, and until he died; I first saw him outside of Sutter's fort sawing lumber; he was "jack of all trades;" a useful man. Daylor had no grant within the boundaries of Sutter's grant as described by me; he never had a Mexican grant personally anywhere. When I returned to Sacramento or Sutter's fort in 1846 or 1847, Daylor was living on the Cosumnes river, on Sheldon's grant, claiming to have purchased one-half of it; I *don't* think, but don't know, whether or not Sheldon's grant was within the boundaries of the land claimed by Sutter as described by me.

Did the site of the present city of Sacramento overflow in the spring of 1844?

I think not; it was a very dry year.

Did it overflow in 1847?

The sloughs were full of water, and there was a portion of the city overflowed; the plains was not overflowed between Sutter's fort and the river; 1848 was a dry year, and the present site of the city was not overflowed; 1849, in the winter, and the spring of 1850, it was a wet season, and the plain from the fort to the river was overflowed; you could travel from the fort to the river in boats, by following the sloughs or low places. In March, 1852, or in the spring, some time of that year, the rise of the waters broke the levee in three places, one on the Sacramento and two on the American river, and overflowed the greater portion of the town or city of Sacramento.

How far above the mouth of the American river was Sutter's mill-house, which you have heretofore mentioned in your testimony?

It was about five miles, in a straight line, in a southeast direction, up the river. Capt. Sutter built a mill on the American river, about fifty miles from Sacramento city, in 1847, or was interested in the building of one. Capt. Sutter had a fort at a point seven leagues from the bay of Bodega, called Presidio Ress, and a farming establishment within two leagues of the bay of Bodega; it was a large farming establishment, the largest in California.

Cross-examination.—Questions by Att'y for the Claimant.

Under what right did Capt. Sutter claim the farming establishment at the bay of Bodega?

By purchase from the Russians; he had possession of it after the Russians left. I know of no instrument of writing; all I know about it is from hearsay.

Had Genl. Sutter, from the time you first came to the county up to the time of laying out of the city of Sacramento, a road from the fort to the Sacramento river, through the present city of Sacramento? If so, what was the landing called?

He had such a road, or there was such a road, and the landing was called Sutter's embarcadero. The city of Sacramento was laid out on what was claimed as Sutter's grant, and since it was laid out it has al-

ways been recognised and claimed by Sutter, and those claiming under him, as a part of his grant. Where I have said or used the word grant in this deposition I have always meant land. I know nothing about the boundaries of his grants.

[The att'y for the claimant objects to the whole of the deposition on all legal grounds.]

SAMUEL NORRIS.

Sworn to and subscribed before me this 21st day of March, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Examination adjourned until to-morrow, March 22d, A. D. 1856, at 9½ o'clock, a. m.

March 22d, A. D. 1856. Additional witnesses sworn in this case, C. M. Cornell, John Bigler, and F. S. Lardner.

THE UNITED STATES
vs.
JOHN A. SUTTER.

Examination adjourned from yesterday resumed this 22d day of March, A. D. 1856.

Examination of Eli Goodale.

Eli Goodale recalled.

Direct Examination resumed.—Questions by the Att'y for the U. S.

What is the character of your interest in property, lots or land, in and about the city of Sacramento?

I have what might be termed a settler's interest in some lands of which I have possession. I also have a Sutter title to lands of which I have not possession; and had I possession of the lands held under the Sutter title, and was compelled to give up the lands of which I have possession, I consider that I would be as well off in a pecuniary point of view.

Cross-examination resumed.—Questions by the Attorney for the Claimant.

State the number of the lots and blocks, and the value of the lots, that you own under Sutter title in and about Sacramento city; and the number of the lots and blocks, and the value of the lots, that you own under a settler's title.

I consider the interest I have in the two lots, Nos. 2 and 8, in block between D and E, and 6th and 7th streets, which are inside of the levee, of which I have not possession, to be worth $1,000 00 for the two; I derived title to them from Julius Wetzler. I have, I think, Sutter titles to two lots, bought from D. S. Stevens, lying between D and E, 3d and 4th streets, and E and F, 5th and 6th streets; the two lots are worth ten or twenty dollars apiece; they

are outside of the levee. I have in possession by settlers' title some six or eight lots between D and G streets, and between 3d and 6th streets; I suppose all the lots contain between two and three acres; they are all outside of the levee, and there is no demand for them; I consider them worth about twenty-five dollars an acre for tilling purposes; I think they are assessed at from ten to a hundred dollars apiece. I did not understand the question. I have in addition to the lots just spoken of by settlers' title in possession some eight other lots within the same boundaries last given; they contain about the same amount of land, and are about of the same value as those first testified about. These are all the lots I own by settlers' title.

Direct Examination resumed.—Questions by the Att'y for the U. S.

What do you consider your interest worth in property under Sutter title, and what under settlers' title?

I consider my interest worth a thousand dollars under each.

[The att'y for the claimant here objects to the foregoing deposition in every part on all legal grounds.]

ELI GOODALE.

Sworn to and subscribed before this 22d day of March, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Deposition of C. M. Cornell.

C. M. Cornell being duly sworn, deposes and says as follows:

Questions by Att'y for the U. S.

What is your name, age, and place of residence?

My name is C. M. Cornell; my age is twenty-eight years, and my place of residence Sacramento city, Cal'a.

What is your profession, and what office do you hold?

I am a surveyor by profession, and hold the office of city surveyor in Sacramento city.

How long have you been acquainted with the topography of the country bordering on the Sacramento, and south of Feather river?

I am not acquainted with the topography of the country outside of the city limits; I have been acquainted with it within the city limits about three years.

What part of the land within the city limits is liable to overflow from the impulses, swellings, and currents of the river?

The greater portion of it would be liable to overflow annually under ordinary circumstances if not protected by the levee.

In the winter of 1854 and 1855 how high did the water rise above the level of the business part of the city of Sacramento, and how long did the water remain at and above the level of the city?

The water rose over two feet above the level of the business part of the city, and remained at that height several days.

Cross-examination.—Questions by the Att'y for the Claimant.

During the time in which you have been acquainted with the land within the limits of the city, has there been any year when the ordinary crops of the country could not be raised on that land?

There has not. The water in the winter of 1854 and 1855 did rise above the natural banks of the river within the limits of the city. If there was no levee, there are of course some crops which could not be raised, but such crops as are generally raised about the city could be raised. Where I have spoken of the winter of 1854 and 1855 I mean the early part of the year 1855.

[The att'y for the claimant objects to the whole of the foregoing deposition on all legal grounds.]

C. M. CORNELL.

Sworn and subscribed before me this 22d day of March, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Deposition of John Bigler.

John Bigler being duly sworn, deposes and says as follows:

Questions by the Att'y for the U. S.

What is your name, age, and place of residence?

My name is John Bigler; I am fifty-one years of age, and I reside at Sacramento city, Cal'a.

Are you acquainted with the topography of the country bordering on the Sacramento river, and south of Feather river; if yea, how long have you been acquainted with it, and what part of it is liable to overflow, from the impulses, swellings, and currents of the river?

I am acquainted with the topography of the country bordering on the Sacramento river, and south of Feather river, and have been acquainted with it since September, 1849; I have seen it covered with water, from the banks of the river, (with the exception of a small mound or strip of land immediately on the bank, which is very narrow,) back to the bluffs; the distance between the points, I do not exactly know; it was so covered in 1850, in the spring; in 1851 I was absent from this part of the country, and know nothing about it; in 1852 it was again so overflowed; I have no recollection about it in 1853; in the spring of 1854 there was water covering a large portion of the country I have before described; I have no recollection of the height of the water in 1855; the strip I have before testified about, I should think, from its appearance, had been or was an Indian mound, and is located about three miles above the city; the city of Sacramento is within the boundaries of the overflowed country I have described; in the spring of 1850 there were large bodies of water in the lower part of the present city, now protected by the levee, and there was water on the low slough lands, between 2d street and the river. Dr. White left San José in January, 1850, and returned to Sacramento on account

of the flood; I remember this, because Dr. White was then speaker of the assembly, and I was elected speaker to supply the vacancy; on his return, I remember he told me about the flood, the suffering of the inhabitants, &c.; before I returned to Sacramento city, in May, 1850, the flood had receded considerably, still leaving the water of which I have testified in the spring of that year. In the early part of 1852 I resided in a house situated between L and M streets, and 2d and 3d streets, and the water must have been all of five feet around my house; I left it and took my family to the "Orleans Hotel;" at the Orleans the water was on the porch on the outside of the building, but did not get upon the floor on the inside; the water was probably two or three inches deep on the ground around the Orleans; that ground is, I think, considerably higher than the lower and other parts of the city—not, however, higher than all other parts; the low land on the banks of the river extends down as low as Hastings' house, in Sutterville; beyond that I am not so familiar with the land.

What improvements has the city of Sacramento made to protect herself from overflow; when were those improvements made, and what did they cost?

She has built a levee to protect her from inundation; it was commenced in 1850; since that time various changes have been made in the levee, and additions to it. These various improvements have cost several hundred thousand dollars—I have always understood, over two hundred thousand dollars; several of the streets have also been raised to be above overflow, viz., part of I, all of J, K, and part of L; what it cost the city to raise them I cannot tell, nor how high they have been raised; a part of J street, I should think, from looking at it, had been raised about four feet; I think J street is located on higher ground than K or L streets; the change in the levee, on the north side of the city, was made from the bank of the American river to the south side of Sutter lake, and was so made because of the insufficiency of the levee first built; the old levee, as it now stands, would, I think, ward off a portion of the water from the city, if the new one had not been built.

Cross-examination.—Questions by Attorney for the Claimant.

What is the character of the country spoken of, with reference to its use for growing the usual crops of the country?

The crops of wheat, barley, and corn in the seasons I have testified about, and in the country I have described, I think could not have been raised. In the country I have described, that is from the river to the bluffs, except on the mound I have spoken of, and on a strip of land along the American river, where vegetables and a little barley has been grown, I have seen nothing but grass; in two of the years I have testified about, in the parcels of land described, I have seen vegetables grown, and in one of the years a little barley.

At what period of the year does the overflow usually commence and abate?

It varies in the commencement and the abatement; in May, 1850, there was a considerable portion of the district of country I have described under water; I don't know how long it remained so; I don't remember the duration of the overflow in 1852 or 1853. In May, 1854, there was a considerable portion of the district of country I have described under water; don't know how long it remained so; don't know anything about it in 1855.

How many seasons, on an average, does the land overflow?

I have stated all the seasons I have any knowledge about, and that is all I can say on the subject.

What is the general cause of these overflows?

They generally result from a surplus of water, produced by snow and rains, in connection with the flatness and lowless of the country.

Can you state what is generally the rainy and dry season in California, and its effects on the country you describe for cropping as connected with these overflows?

There is more or less rain falls in the months of December, January, February, March, and April, sometimes in May. The remainder of the months of the year are generally termed the dry season. If the country was overflown to the depth I have seen it, in the parts described, I have no doubt it would destroy any species of grain crops.

On what portion of the country you have described, from Feather river south, could a crop be made for the majority of years, after the overflow subsides?

All I can say in answer to the question is the statement I have heretofore made, and the circumstances of the several overflows I have heretofore detailed; in the country I have described the land is higher on the bank of the river than it is further back; the high portion of land on the bank I should think was not over a quarter of a mile wide. I have purchased all but two lots of the place I now occupy under the Sutter title, and have acquired all the titles I could to those two lots, in the absence of a Mr. Shindler, who is represented by Mr. McGlynn to be his assignee or agent of some kind, and it is from him the Sutter title must be obtained; I own an interest in one hundred and sixty acres of land in the Gelston grant, which I purchased of Mr. Nickerson, after consultation with Gilbert A. Grant, who claims to be part owner of the Gelston grant. I understand there is a controversy between those holding under Sutter and Gelston; with regard to this land I understand that Gelston claims adversely to Sutter and his grantees; this is the only interest I have in lands claimed by John A. Sutter, adversely or otherwise.

Did you or not advise Patrick O'Conner and others, or any one from San Francisco, in the summer *of* autumn of 1853, to settle on any lots or lands within what was called the Sutter claim, and as an inducement thereto, tell him or them that you would not give twenty-five cents for all Sutter's claims?

I have no recollection of anything of the kind.

[The attorney for the claimant objects to the whole of the foregoing deposition on the grounds of interest, and all other legal objections.]

JOHN BIGLER.

Sworn to and subscribed before me, this 22d day of March, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Deposition of F. S. Lardner.

F. S. Lardner being duly sworn, deposes and says as follows:

Questions by U. S. Att'y.

What is your name, age, and place of residence?

My name is F. S. Lardner; my age is thirty-four; and I reside in Sacramento city, Cal'a.

Are you acquainted with the topography of the county bordering on the Sacramento river, and south of Feather river; if yea, how long have you been acquainted with it, and what part of it is liable to overflow from the impulses, swellings, and currents of the river?

I am acquainted with the topography of the county bordering on the Sacramento river, within the limits of Sacramento city, but not beyond those limits; I have been acquainted with portion of it nearly seven years prior to this time and until now. The most of the land on the river, within the city limits, is liable to overflow, if not protected by the levee, and have seen nearly $\frac{2}{3}$ of it overflowed in 1850, 1852, and 1853; and the same lands would have been overflowed, had they not been protected by the levee, in 1854. I have seen the lands overflowed to various depths, from six inches to eight feet; a strong levee is required to protect the land, and such a levee has been built about four feet high on I street, and at R street about eight feet "high." In addition to this levee the streets have been raised I street to the average of about four feet, and as you go south the streets have to be raised higher. At what costs these improvements have been made, I am unable to say; but I should suppose the raising of the streets has cost about sixty or seventy thousand dollars; I mean J and K streets cost about that amount; but all I know on this subject is simply from surmises on the subject.

What is the character of the lands you have spoken of in the city limits, in reference to its use for growing the usual crops of the county?

Outside of the levee it is cultivated for garden purposes; and I have known it, after the seeds were in the ground, to be overflowed so that the crops were destroyed at a period so late that the new crop or a portion of it planted could not mature; I speak thus principally with reference to the year 1850. The first crop was again destroyed in 1853; but the overflow was not so late as to prevent me from planting and growing a second crop. Generally the land I have spoken of would produce a crop of vegetables after the overflow.

Do you claim, or are you in possession of, any land within the limits of the land claimed by John A. Sutter, adversely to that claim; if so, where, and what lands are they?

I have no property which I have not bought, paid the purchase-money, and obtained a deed for; whether that land or property is claimed by Sutter, or any other person, I don't know; I have an interest in four lots, which it is said I have no Sutter title for. I have heard, and know that the Sutter claimants claim the whole of Sacramento city to be within the claim of John A. Sutter; I own three lots in the city, and am in possession of them under the Sutter title; and I own also, and am in possession of, eighty-five acres of land beyond the city limits, about one mile from the city, under a Sutter title, obtained from Eugene Gillespie; this is all the land or lots I own within the limits of the Sutter claim, adversely or otherwise. Whether I would lose or gain by the confirmation of the Sutter title, would depend upon the price placed upon the lots I own by the city. I have never paid nor become responsible to pay one dollar to resist the prosecution of the claim of Sutter. I am told that I hold land adversely to the Sutter claim; I do not know it, because I have not examined the records. I paid one hundred dollars, I think, for one of the lots, and five hundred dollars for the other lots, I am told I hold adversely to Sutter; I can't tell what the lots are worth; they are not productive; they are assessed (three of them) at five hundred dollars apiece.

Direct Examination resumed.—Questions by the U. S. Attorney.

In what part of the city did you live; and could ordinary crops be raised throughout the extent of the city, the greater number of years in which you have lived here?

I lived between A and B streets, I believe, and between 5th and 7th on the north side of the city. Ordinary crops would have to be planted twice throughout the greater part of the city, in the northern part, the majority of years I have lived here.

Cross-examination resumed.—Questions by the Att'y for the Claimant.

Did you, or did you not, live in a part of the city lower than the greater portion of it?

There was a portion of my ranch higher, and a part lower, than the greater part of the city; there may be a slight difference between the height northern and southern banks of the slough on which I lived, in favor of the southern bank. The overflows of which I have testified lasted from one to four weeks, in different years. I have no recollection of having seed wheat, barley, corn or oats, on the lands overflowed, after the overflow. I can't tell you the extent of the city, except that it runs in streets from 1st to 31st street in one direction, and in another direction from the 1st letter in the alphabet to the last letter of the alphabet, in the names of the streets two ways, "north and south."

[The att'y for the claimant objects to the whole of the foregoing deposition, on the grounds of interest, and all other legal objections.]

F. S. LARDNER.

Sworn to and subscribed before me, this 22d day of March, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Examination adjourned "sine die."

Exhibit A—G. P. J.

In the United States District Court for the northern district of California.

THE UNITED STATES
vs.
JOHN A. SUTTER. } No. 319.

Appeal from the U. S. Land Commission.

V. E. HOWARD, Esq.,
Attorney for Defendant.

Take notice, that on the 21st of March, 1856, at the hour of 10 a. m., at the office of Bowie and Griffith, in Read's building, corner of J and 3d streets, in the city of Sacramento, in said State, before Geo. Pen Johnston, a commissioner duly appointed and qualified, I shall proceed to take the depositions of Mr. Johnston, ——— Hopper, B. Cahoon, W. L. De Witt, S. H. Marlett, H. A. Caulfield, ——— Laufzetter, and others, to be read in evidence on the trial of the above entitled case, on the part of the United States.

Respectfully,

J. H. McKUNE,
Att'y for Plaintiff.

In the United States District Court for the northern district of California.

THE UNITED STATES
vs.
JOHN A. SUTTER. } No. 319.

Appeal from the U. S. Land Commission.

V. E. HOWARD, Esq.,
Att'y for Defendant.

Take notice, that on the 21st day of March, 1856, at 12 m. of the clock, at the office of Bowie and Griffith, in Read's building, corner of J and 3d streets, in the city of Sacramento, in said State, before Geo. Pen Johnston, a commissioner of said court, duly appointed and qualified, I shall proceed to take the depositions of John Bigler, ——— Harvey, Jesse Morrill, Eli Goodale, Wm. Carley, F. S. Lardner, E. Gay, ——— Ellison, C. M. Cornell, ——— Mace, T. Robinson, L. Cross, S. Norris,

and others, to be read in evidence on the trial of the above entitled case, on the part of the United States.

Respectfully,

J. H. McKUNE,
Att'y for Pl'tff.

Endorsed: Filed March 27th, 1856.

JOHN A. MONROE, *Clerk,*
Per W. H. CHEVERS, *Deputy Clerk.*

Dunlap's Authority to Act.

The United States Dist. Court for northern dist. California.

UNITED STATES, Appellant,
vs.
JOHN A. SUTTER, Appellee. } No. 319.

On appeal from board of land commissioners.

I, Volney E. Howard, the attorney for the appellee in the above entitled cause, do hereby request and authorize and empower Presley Dunlap, of Sacramento city, to appear for me on behalf of the said appellee, before any persons taking depositions in the above cause, and conduct the examination of said witnesses on the part of said appellee, and fully authorize him to make any agreement in the cause in relation to the reading and taking said depositions, which to him shall seem proper.

V. E. HOWARD,
For J. A. SUTTER, *Appellee.*

Sacramento, March 24th, 1856.

Endorsed: Filed March 31, 1856.

JOHN A. MONROE, *Cl'k.*
W. H. CHEVERS, *Dep'ty Cl'k.*

In the U. S. District Court of the northern dist. of Cal.

UNITED STATES, Appellant,
vs.
JOHN A. SUTTER, Appellee.

On appeal from U. S. board of land commissioners.

It is hereby stipulated and agreed by and between the attorneys for the appellant and appellee, that the depositions of John Bidwell, H. A. Caulfield, James McClatchey, James M. Sanford, Richard D. Ferguson, C. Brockway, Geo. R. Nesbitt, Thomas J. Hall, G. W. Foster, Samuel Norris, John Prentice, C. W. Hoyt and John F. Madden, taken before Samuel Cross, a notary public in and for the county of Sacramento and State of California, at Sacramento city, may and shall be read in evidence on the trial of the above entitled cause, with the same force and effect as though duly taken on proper legal notice before a commissioner of said court, subject to all legal objections, except as to the time, place, notice, and officer taking the same. All of which

are hereby expressly waived, (viz: the time, place, notice, and officer is waived;) the depositions being annexed.

PRESLY DUNLAP,
Att'y for Appellee, or Claimant.

March 29th, 1856.

I hereby agree that these depositions shall be delivered to J. H. McKune, att'y for the U. S. in case, and for him to carry them to the clerk's office to be there filed.

P. DUNLAP,
Att'y for Sutter.

March 29th, 1856.

Deposition of John Bidwell.

In the United States District Court for the northern district of the State of California.

THE UNITED STATES against JOHN A. SUTTER. } No. 319.

The deposition of John Bidwell taken by consent of parties before me, Samuel Cross, a notary public in and for the county of Sacramento and State of California, on this 25th day of March, 1856, in the city of Sacramento, in said county and State, pursuant to the agreement hereunto annexed. Presly Dunlap appearing on behalf of the appellee, and John H. McKune on behalf of the appellant.

Question by Mr. McKune, Att'y for the U. States.

No. 1. How long and where have you resided in California, and in what have you been engaged during that time?

Answer. I have resided in California since November, 1841. From 1841 to 1846 I resided most of the time in Sacramento valley, in the employ of John A. Sutter, sen., the claimant. Part of that time, viz., about 14 months, I resided at Bodega, in the employ of Capt. Sutter.

No. 2. Where were you, and in what employment, in the latter part of 1844, and the first three months of 1845?

Answer. In the latter part of 1844 I was variously engaged. Part of the time I was trying to make a ranch at the mouth of the Sacramento river. The only other employment I had was in making locations and maps, and looking up places to locate grants. During the first three months of 1845 I was engaged in what was called "the Micheltorano war" in this country, under the command of Captain Sutter.

No. 3. What time did Micheltorano march from Monterey towards Los Angeles on that expedition, and with what object?

Answer. He marched from his encampment, about fifteen miles east of Monterey, on the 13th day of January, 1845. His object was to sustain his authority as governor of the country against Gen. Castro

who had raised forces against him for the purpose of compelling Micheltorano to leave the country.

No. 4. How long was Micheltorano absent from Monterey, the capital of California, on that expedition?

Answer. I think he must have been absent about two and a half months.

No. 5. Did he again assume the functions of governor on his return?

Answer. I do not know; I was not in Monterey at that time. He came up to arrange his matters prior to leaving, and was not very long about it, as I understood.

No. 6. What induced Micheltorano to leave the country, and upon what arrangement did he leave it? State also with whom, when, and where, that arrangement was made?

Answer. The Californians rose up against, and were too strong for, him; he thought they were too strong, as I suppose. It was generally known that he made a capitulation with Castro and Pio Pico, at Caohuenga, about 12 or 14 miles north of Los Angeles. This was from the 20th to the 25th day of February, 1845, or thereabouts. The main feature of the arrangement was, that Micheltorano was to leave the country with the regular soldiers. Another was, that he should march immediately to San Pedro, for embarcation with his troops. It was generally understood that he should go to Monterey, prior to leaving for Mexico. Micheltorano did embark without delay, and came up to Monterey, and then left Monterey; my impression is that he left the country within a month after the treaty with Castro. Los Angeles was the capital after Pio Pico came into power.

No. 7. How soon after the treaty of Coahuenga did you and Capt. Sutter leave the southern country for the district of Sacramento?

Answer. About a week, as near as I can remember.

No. 8. Who acted as secretary and clerk for Capt. Sutter during the next year after that treaty, at the fort?

Answer. I did.

No. 9. Did you, as such clerk, frequently have occasion to examine his papers?

Answer. Some kinds of papers; all such as related to accounts and business, I had.

No. 10. Did you ever have occasion to converse with him about his land-titles, and did he ever show you any of them?

Answer. I don't remember now any particular conversation with Sutter in reference to his land-titles. I read his title for the eleven leagues, and my impression is that it was at Monterey. I cannot say positively that I had it in my hands. I frequently had occasion to converse with Capt. Sutter in reference to his land claims.

No. 11. Did you ever compile a map for the use of the government of California; if so, from what data did you compile it?

Answer. I made a map of the Sacramento valley for Micheltorano, and also one for Pio Pico. These maps were made from the knowledge I had of the country, and from travelling over it a good deal. In the

details of those maps I never pretended to accuracy, as I had no instruments except a pocket compass.

No. 12. Had you, before compiling those maps, had conversations with Capt. Sutter in reference to his claim, and did he ever inform you what governor gave him his grant under which he claimed his land?

Answer. I do not remember any particular conversation in reference to it. I frequently saw his map, having frequent occasion to refer to it in draughting sketches of lands adjacent to Sutter's. In the conversations referred to in the answer No. 10, I had reference to such as naturally arose when persons visited New Helvetia or Sutter's establishment for the purpose of finding locations to obtain grants.

No. 13. What extent of land did Sutter claim from 1841 to 1845, excluding those years?

Answer. Sutter claimed the land which was bounded or included within the parallel of 38 degrees some minutes and seconds, and the parallel of 39° 33′ 45″, which was supposed to include the Buttes; this land all lay east of the Sacramento river, and extended east towards the Sierra Nevada. His idea was that he would or could hold all the lands comprised within his map and between the parallels mentioned above.

No. 14. What extent of lands did Sutter claim in the years 1845 and 1846?

Answer. He claimed the same amount that he did before, so far as I know. He occupied the same, his cattle ran on the same, and his pretensions were the same, so far as I know.

No. 15. Under what grant did he claim the land?

Answer. On my arrival in this country I understood that Sutter had a grant from the Mexican government; and I always supposed that he claimed the land under that grant. I did not then know from what it came, but subsequently learned that the grant was from Alvarado.

No. 16. Have any of those impressions been derived from Capt. Sutter, that it was under that grant?

Answer. I cannot say positively whether they were made directly in conversation with Capt. Sutter or not.

No. 17. Has he ever communicated to you, directly or indirectly, what his sources of title were?

Answer. I always understood from Sutter that he claimed it under a grant from the government. This was the same grant already mentioned.

No. 18. Did he pretend to claim any other or further right after the Micheltorano expedition of 1845, than he did before?

Answer. I do not know that he did. He claimed all the country before. So far as I know, he did not to me pretend to have any additional title that I can now remember.

No. 19. Was not the relationship existing between you and Capt. Sutter in 1845 and '6, such that you would have known of other title if there were any?

Answer. During the year 1846, from June, I was absent, and did not see Sutter at all. If a title had been made and brought up to this part of the country by a courier or express, I think I should have been apt to have heard it; in 1845, or the fore part of 1846, as I was with Sutter during the whole of the year 1845, I would suppose that some time during that year the subject of a new title would have been brought up if he had received any. Frequently grants were made to lands in this valley, which I did not hear of for years afterwards.

No. 20. When did you first hear that Capt. Sutter claimed lands under a grant from Micheltorano, to him and his son, for 22 leagues of land?

Answer. I cannot remember what time it was, but I never heard of it until the land commission convened in San Francisco. I know he made application for the Sobrante (surplus) in October, 1844.

No. 21. Did you ever see the petition for that application?

Answer. I cannot now remember positively, but I believe I did. If I saw it, it was in Jimeno's hands in Monterey, in October, 1844. It was in the handwriting of Francisco Arce. I don't recollect certainly whether I read it, or ever heard it read. I think I must have seen the petition, because I made maps to accompany it. I don't pretend to state the contents of the petition.

Cross-examined by Presly Dunlap, Attorney for the Appellee.

Question No. 1. Was it part of your business of secretary or clerk for Capt. Sutter, to take charge of his title-papers, deeds, and grants?

Answer. It was not.

No. 2. Did you ever have in your possession as custodian, or was you custodian of papers belonging to Capt. Sutter, of that character?

Answer. Not that I can now remember.

No. 3. On the map which you prepared for Micheltorano and Pio Pico, was the land which was claimed by Capt. Sutter there laid down; and if , describe it according to the best of your recollection? State also at what time you made the map?

Answer. I made the map for Micheltorano in the fall of 1844, and for Pio Pico in the summer of 1845. The land claimed by Sutter was laid down on those maps; I put it down as the land called New Helvetia. On that map Sutter's lands were laid down between the parallels of latitude as described in my direct examination.

No. 4. Were the maps above spoken of ever filed among the archives of State of the department of Upper California; or what did you do with them?

Answer. The one I made for Micheltorano was delivered to Jimeno, Secretary of State; I sent the other to Don Juan Bandini, who was then Secretary of State for Pio Pico.

No. 5. Might not Sutter have received the Sobrante grant while in the lower country, without your knowing it, when there in 1845?

Answer. Oh, yes, it is possible he might have received it without my knowing it.

No. 6. Where was Micheltorano on or about February 5th, 1845?

Answer. He must at that time have been either at Santa Barbara or San Buenaventura.

Claimant, by his attorney, excepts to the whole of the foregoing deposition on all legal grounds, except those mentioned in the agreement hereto annexed.

J. BIDWELL.

Sworn to and subscribed before me on this 25th day of March, 1856.

SAMUEL CROSS,
Notary Public Sac. Co., Cal.

Deposition of Henry A. Caulfield.

Henry A. Caulfield, a witness produced on the part of the appellant, being duly sworn, deposes and says:

Question No. 1. What are your name, age, and place of residence?

Answer. My name is Henry A. Caulfield; my age is 32 years; residence Sacramento city.

No. 2. Were you present at an examination of John A. Sutter as a witness in a certain case tried before C. C. Sackett in and for the city of Sacramento, wherein Julius Wetzlar et al. were plaintiffs, and M. A. Milligan et al. were defendants?

Answer. I was present at that examination.

No. 3. Did you hear the counsel for the defendants ask Jno. A. Sutter, on such examination, a question in substance as follows: "Did you ever have any other title from the Mexican government than the one now here produced in court?" If you did hear such question, what was the reply of the said Sutter?

Answer. Mr. McKune was counsel for defendants; I heard him ask that question. He answered that he never had any other grant than that from Alvarado. It was a paper then lying on the table before him at the time. This was understood to be the original grant then lying there. It purported to be the original grant from Alvarado to Sutter, and was introduced as such by Wetzlar & Co.

Cross-examination by Presly Dunlap, of Counsel for the Appellee.

Question No. 1. When did you arrive in California; where have you since resided; and what has been your occupation?

Answer. I arrived in California on August 11th, 1849. I have resided in Sacramento city and county all the time since then. My legitimate business was that of a carpenter. Have also been engaged in farming, gardening, trading, &c.

No. 2. During the time you have lived in the city and county of Sacramento, have you resided within the limits of the lands claimed under the grants to Sutter?

Answer. I have lived in the American township within a quarter mile of the Sacramento river, and a half mile of the American river; I have also lived in Sacramento city, where I now reside. I live within the boundaries of what he now claims.

No. 3. Are you in possession of, or claim a title to, or right of possession of any lots or tracts of land within the limits of what is claimed as being within the limits of Sutter's grant, adverse to said Sutter or those claiming title under him?

Answer. I am.

Claimant, by his attorney, P. Dunlap, excepts and objects to the foregoing deposition on the ground of the interest of the witness, and on all other grounds not enumerated in the annexed agreement.

H. A. CAULFIELD.

Sworn to and subscribed before me on this 25th day of March, 1856.

SAMUEL CROSS,
Notary Public Sac. Co., Cal.

Deposition of James McClatchy.

James McClatchy, a witness produced and sworn on the part of the appellant, on oath, deposes and says:

Question No. 1. What is your name, age, place of residence, and occupation?

Answer. My name is James McClatchy; age 32 years; residence Sacramento city; and occupation editor.

No. 2. Were you present at an examination of John A. Sutter as a witness in an action tried before C. C. Sackett, in and for the city of Sacramento, wherein Julius Wetzlar et al. were plaintiffs, and M. A. Milligan et al. were defendants?

Answer. I am not certain whether this was the case at which I was present, or not; I was present at some case tried before Judge Sackett, in which the said Sutter was a witness; Wetzlar and Milligan were present; Russell & Wallace were attorneys on one side, and Judge Heslip was attorney on the other.

No. 3. Did you hear the counsel for defendants ask John A. Sutter, on such examination, a question in substance as follows: "Did you ever have any other from the Mexican government than the one now here produced in court?" If you did hear such question, what was the reply of the said Sutter?

Answer. Without knowing who put the question, I heard the question asked, and I understood the grant then in court to be the 11 league grant, and I understood the answer to be in the negative, but cannot state positively; I believe the answer was in the negative.

Cross-examination by Presly Dunlap, of Counsel for the Appellee.

Ques. No. 1. When did you arrive in California; where have you since resided, and what has been your business?

Answer. I arrived at San Diego in June, 1849; have been in the country ever since, and engaged in mining, publishing and editing newspapers; my residence has been principally in Sacramento.

Ques. No. 2. When was the lawsuit referred to above had?

Answer. It was in 1850 or 1851, I don't recollect which.

Quest. No. 3. Was John H. McKune one of the attorneys in that case?

Answer. I am not certain.

Quest. No. 4. Was the testimony of which you spoke taken down in writing; if so, by whom?

Answer. My impression is, that it was then taken down by Judge Sackett; I am not certain about this; a portion of the testimony was afterwards published in "The Placer Times."

Quest. No. 5. In what capacity was Sackett acting?

Answer. As justice of the peace.

Quest. No. 6. What was the nature or character of the action in which this testimony was taken?

Answer. I am not certain, but my impression is that it was for a lot of land on the river bank, which Milligan had possession of.

Quest. No. 7. At the time of your arrival in the city of Sacramento and since, has it not been a matter of universal notoriety that the lands within the city of Sacramento, and for some distance below on the Sacramento river, and for some distance up the American river, were claimed as being part of the lands granted to said Sutter, and owned by him and his grantees?

Answer. They were so claimed by Sutter, his grantees, and many others; these were the lands claimed; those claiming adversely to Sutter, claimed by right of possession as public lands.

Quest. No. 8. At what time did you come to arrive in Sacramento city?

Answer. I believe it was about February of 1850.

Direct Examination resumed.

Quest. No. 1. Did Sutter, at the time of your arrival here, claim these lands, under any grant; if so, what grant?

Answer. The first time I ever heard Capt. Sutter speak about it, was early in 1850; he was then conversing with Mr. Milligan; he said then to Milligan that he had no grant here, but America had come to his house; he had fed America, and America would give him this land. By the word "here," I understood the lands in and around Sacramento city.

Cross-examination resumed.

Quest. No. 1. Where did that conversation take place, and what are the circumstances that led to it?

Answer. It took place near Mr. Milligan's house on the levee. I understood when I came up that they were conversing about that lot on which Milligan lived, and about squatters and anti-squatters generally.

Quest. No. 2. Do you not know, within your own knowledge, at that time and since, that all the lands within the limits of the city of Sacramento were claimed by those claiming title under Sutter's grant, or grants made to Sutter?

Answer. Yes, they claimed under one grant, viz: the 11 league grant.

Quest. No. 3. Have you not at various times understood that there were two grants made by the Mexican government to Sutter?

Answer. Yes, within the last 3, 4, or perhaps 5 years.

Direct Examination resumed.

Quest. No. 1. Will you state the connection in which Capt. Sutter stated, in his conversation with Mr. Milligan, detailed by you above stated, that America would give him land, and the reasons he gave why America would give him this land?

Answer. During that conversation he said that he had come here at an early day, built his fort, and christianised the Indians. Colonel Fremont had come here, and he (Sutter) had given, or let him have, animals, and fed the soldiers, and that America, therefore, would give him this land.

Quest. No. 2. Did you understand him as basing his claim on the United States for the confirmation or gift of this land to him on these acts of his in aiding Col. Fremont and his soldiers as officers and soldiers of the United States?

Answer. I understood him to say that he had no grant, and based his claims for these lands on the services here mentioned, saying it was a just claim, and the United States being just, he had no doubt would give them to him.

Cross-examination resumed.

Quest. No. 1. Do you now, or have you at any former period, belonged to any league, association, company or combination, formed for the purpose of defeating before the United States board of land commissioners, and the proper courts of the county, the claims of those holding or claiming lands under Mexican or Spanish grants?

Answer. I never belonged to any league, combination or company, for the purpose of defeating the claims of Capt. Sutter, or any one else, before the land commissioners, or any United States court, but I have belonged to associations whose objects were to defend the settlers in the courts of this city, county and State.

Quest. No. 2. Have you not belonged, and do you not now belong, to the settlers' league of Sacramento county?

Answer. I belonged to such an organization some 4 years ago, but not since. The purposes and objects of that association were principally political.

Direct Examination again resumed.

Quest. No. 1. Do you now hold, claim, or occupy, any lands adversely to the claims of Capt. Sutter?

Answer. I do not.

Attorney for claimant objects and excepts to the foregoing deposition, on the grounds of irrelevancy, competency of the witness, and to the testimony in relation to Capt. Sutter's testimony, because it was re-

duced to writing at the time, and that writing is the best evidence, and on all other legal except those mentioned in the agreement hereto annexed.

JAMES McCLATCHY.

Sworn to and subscribed before on this 25th day of March, 1856.

SAMUEL CROSS,
Notary Public Sac. Co., Cal.

Deposition of James M. Sandford.

James M. Sandford, a witness produced and duly sworn on the part of the appellant, deposes and says:

Quest. No. 1. Where do you reside, and how long have you resided there; what is your occupation, and age, and name?

Answer. My name is James M. Sandford; age about 34 years; residence on the east bank of the Sacramento, about 6 miles below the mouth of the American river; have resided there since the fall of 1850; my occupation is a farmer.

Quest. No. 2. Are you acquainted with the lands lying on the east side of the Sacramento river, south of the American river, and between the American river and Feather river? If yea, state what portion and how much of those lands are subject to overflow by the swelling and overflow of the currents of the Sacramento, American and Feather rivers; to what extent and how frequently the said lands are overflowed in this manner, and to what extent such overflow, if any, affects these lands for farming purposes.

Answer. I am acquainted with all the lands described in the question, and from Sacramento river to the mountains. I am not much acquainted with the lands about Feather river, as I have been there only in the dry season; during the time of the high water of 1849, I frequently went to the mouth of Feather river. From the mouth of the Feather river, down the Sacramento on the east side to the American river, there is a strip immediately adjoining the river that will average, perhaps, three miles wide, that is inundated land; the lands between this strip and the mountains are above inundation. A slight bluff marks the inundated lands, and those not subject to overflow. It is about 6 or 8 feet high, and runs somewhat corresponding with the direction of the river; on this portion, in 1849, it was all a level sheet of water from the bluffs on the east side to a corresponding bluff on the west, making the river in all, with its overflowed banks, about 10 miles across; many places it was not easily ascertained where the river was, except by trees and landmarks. As it regards the time of the overflow, I have never set down any dates; as near as I can recollect, it took place in January, 1850, and then again in the spring. When I said 1849, I meant the *water* of 1849 and 1850; my impression is, that the first rise was at its height a fortnight or three weeks; it then stood a little lower for several weeks, so that the bank could be seen in some places. The water then rose again in the latter part of March or April; it was not quite so high as the first time, and I am unable to

say how long it then remained, as I went to the mines. The land above described overflowed again in the spring of 1852, and then twice in 1853. Last year it was less inundated than formerly, on account of levees and artificial improvements, to some extent. I am inclined to think that a great portion of the bank was not overflowed last year, on account of the levees; in other places, where there are no levees, the water comes in and overflows the rear of this bank; I judge that eighteenths of this land was or would have been overflowed every year, had not levees and improvements prevented. South of the American river as far as Cordell's slough, 8 or 9 miles below the city, the same strip of land is marked by a similar bluff; the high lands in the rear are above overflow. This strip, with the other, is marked naturally as inundated lands, being covered in the proportion of about $\frac{8}{10}$ by Tulares; it was overflowed in 1849, the same as that I have already described, and during every year since it has been partially inundated, and four years out of six it was wholly inundated, except where protected by artificial improvements, and excepting also an occasional mound and the sand-hills below the city. The settlers commenced in the summer of 1850 making levees on their ranches, which have partially protected this tract of land from inundation; a great portion of the first levees being small, were swept away. There is now nearly twelve miles of levee, reaching from the American river to Cordell's, besides a cross levee from the Sacramento river to the high lands; these have partially protected all the land between *between* the American river and Sutter since the year 1850. There is also another cross levee on R street, on the south side of the city of Sacramento, about 8 or 9 feet high. I have been farming ever since 1850, and find it entirely useless to attempt cultivating the ground without these artificial improvements. I have known perhaps from fifty to one hundred instances where men have attempted to farm without levees, along the Sacramento river, from thirty to fifty of which will be included in the lands above described, and I have never known a case in which they have succeeded in cropping profitably for any number of years together, without artificial improvements.

JAMES M. SANDFORD.

And now, at this hour of 11 o'clock p. m., of this 25th day of March, 1856, this examination is adjourned until 10½ o'clock a. m., on March 26th, 1856.

SAMUEL CROSS,
Notary Public Sac. Co., Cal.

And now, on this 26th day of March, 1856, at the hour appointed the parties appear by their attorneys, John H. McKune, esq., appearing as counsel for the appellants, and Presly Dunlap, esq., appearing as counsel for the appellee; and the examination of witnesses is continued as follows, to wit: James M. Sandford, the above named witness, having been heretofore duly sworn, deposes and says, and the examination is resumed.

Quest. No. 3. State how John A. Sutter's old fort is situated with reference to the bluff or high land described in your previous answer?

Answer. The fort is situated on a neck of high land, forming a corner in the rear of the strip of inundated lands on the Sacramento river, and a similar strip on the American river. This high land is a portion of and connected with the bluff heretofore described, and I think has never been inundated since I was here.

Quest. No. 4. State if the lands lying between the fort and the Sacramento river, upon which Sacramento city now stands, also the lands lying below Sacramento city, and extending down the Sacramento river to a point immediately below Sutterville four miles, and one hundred and twenty rods below the mouth of the American river, are subject to overflow caused by the swelling of the currents of the American and Sacramento rivers; and if so, to what extent, and how often?

Answer. They are liable to be overflowed twice a year where there are no levees. In 1849 the whole of these lands were overflowed; it commenced rising in 1849, and did not get to its height until January, 1850. A few mounds and the sand-hills below the city were not overflowed; the mounds were from a quarter to three quarters of an acre each, and we supposed that they had been built by the Indians. I should judge the sand-hills contain fifty acres; their height corresponds with the bluff in the rear. There are similar mounds on the same strip between the American river and Feather river.

Cross-examination.

Question No. 1. When did you come to the State, where have you since resided, and what has been your business?

Answer. I arrived in the State in the latter part of September, 1849; my residence since that time has been on the Sacramento river, and in Sacramento city in 1849; then in the spring of 1850, during the time of the overflow, I was back and forth between this city and Vernon. From May, 1850, until October I was in the mines, since which time I have resided on the east bank of the Sacramento river, and 6 miles below Sacramento city. In the fall of 1849, and spring of 1850, my business was cutting timber below the mouth of Feather river, boating it to Sacramento city, and building a house on L street, after which I spent my time in the mines until October; since then I have followed the business of farming.

Quest. No. 2. Are you well acquainted with the tract of land lying within the following boundaries: commencing at a point on the east bank of the Sacramento river, where the parallel of latitude 39° 41′ 45″ north latitude will intersect said river; running thence along said parallel of latitude to Feather river; thence across said river to a point three leagues distant therefrom; thence in a southerly direction, and parallel with said river, to a point due east of the mouth of Feather river; thence westerly, to a point within one mile of the Sacramento river; thence southerly, and parallel with said Sacramento river, to the American Fork river; thence up said river, to the lands claimed to have

been granted *to* the Mexican government to Wm. A. Leidsdorff, at, on, or near the place where A. D. Patterson now resides; thence south, along said line, one league; thence, in a southwesterly direction, to the Sacramento river, to the mouth of a slough, above the house of Cordell; thence up the east bank of the Sacramento river, to the place of beginning?

Answer. I am acquainted with the tract described, excepting the land along the Sacramento branch, above the mouth of Feather river.

Quest. No. 3. What portion of that tract of land is arable in ordinary years?

Answer. I think it can nearly all be cultivated by means of artificial improvements. That portion from Feather river up I have never been over, except in the dry season of the year 1849—that is, on the north side of Feather. All the land, from the mouth of Feather river up, seemed to be higher than that below; but I am unable to state how much of it is susceptible of cultivation. Of the land below Feather river, that is on the south side, I think the same remarks apply. I know of no land within a mile of Sacramento river, below the mouth of Feather river, with the exception of a few mounds or points, that can be successfully cultivated, one year with another, without artificial improvements. I am not so particularly acquainted along the American river, except near Sacramento city. That portion of the American which I have seen is subject to the same overflow, though the strip is not perhaps a mile wide in some places, while in some it is wider.

Quest. No. 4. What years have the lands between the mouth of Feather river and the point on the Sacramento at Cordell's slough been overflowed; if overflowed, what time each year, when, and the continuance of each overflow?

Answer. In the winter of 1849 and spring of 1850. I think the overflow commenced in December, and was at its highest pitch in January. It ebbed off some in February; it rose again in March or April. I don't know when the land became dry; when I left the valley it was not dry. I left this tract of country in April or May. In the winter of 1850 and spring of 1851 I have no personal knowledge of any overflow; I did not see any. In summer there was some standing water among the Tules, between the American and Feather rivers; this was about midsummer. In the winter of 1851 and 1852 the flood commenced late in the spring, and abated gradually for about two months; I judge the commencement was not far from the 1st of April. There is never as much as a mile, on an average, ever entirely dry. In the winter of 1852 and 1853 it rose partially early in the winter, was at its highest pitch near the 1st of April, and subsided gradually until near midsummer. In the winter of 1853 and spring of 1854 these lands were partially inundated; but a great portion of them were protected with levees and dams across low places; it did not use that year to go over the banks. In 1854 and 1855 the water was about as high as it was in 1850, which undoubtedly would have inundated all these lands, had they not been protected; I think it commenced rising rapidly in

March, and abated gradually from some time in April till October. All the four years' floods are similar, or have been similar. The Tulares lands within the tract were overflowed in October, 1855. Within the tract between the mouth of Feather river and Cordell's slough I should think there might be 1,000 acres overflowed in the month of October.

Quest. No. 5. Don't you know, of your own knowledge, and by your knowledge of the country about which you have been testifying, that it was not overflowed in any of the months of August, September, or October, of any year since you have known it, by waters from either of the above rivers, and that during all those months of each year, that the waters in the rivers Feather, Sacramento, and American was lower than the general average of the country?

Answer. I think in August, of one or two yeras, the water did not get down on the Tulares lands, or as low as the Tulares land; the way the question is put, I cannot state with certainty.

Quest. No. 6. What portion of the lands described are or were covered or inundated, during August, September, and October, with *with* water from the overflow of the rivers herein named?

Answer. I should state, as my judgment, that there is about one-tenth.

Quest. No. 7. Are not the lands on banks of the Sacramento river, below Feather river, higher than the land is further back?

Answer. They are generally higher than the Tulares which lie between the river and the bluff. There are some low places in the bank, of from one-half to three-quarters of a mile.

Quest. No. 8. What is the distance from the mouth of Feather due east to the high lands; then 10 miles south of Feather river; then at the mouth of the American river; then opposite the present village of Sutterville; then on K street, in Sacramento city?

Answer. At Feather river I should take the distance to be three miles, or less; at 10 miles below I think the distance would be four miles; at the American fork I think it is two or three miles; at K street about two miles; at Sutterville about a half mile.

Quest. No. 9. How much of the country, between Feather river and the American fork, is protected with levee from overflow?

Answer. I have no particular personal knowledge on the subject.

Quest. No. 10. What is the width or dimensions of the neck of land spoken of in your direct examination on which Sutter's fort stands or stood?

Answer. I judge it to be a nook of about one or two acres, and lays in a peculiar form.

Quest. No. 11. Has the country to the east and south of Sutter's fort been overflowed by waters from the rivers; if so, when?

Answer. I have seen it overflowed to the east, but not to the south.

Quest. No. 12. Have you ever seen any of the land lying south of the slough, that passes on the rear of the fort to the American Fork river, near Burns's house, overflowed by water from the river; if so, how much?

Answer. I think I have seen a small portion; the principal overflow to which I refer was north of that slough.

Quest. No. 13. In your direct examination, you say that you knew 30 or 50 farmers who had attempted to cultivate grounds without artificial improvements, along the Sacramento river, who were unsuccessful; now state who those farmers were, and where their farms were situated?

Answer. Many of their names I cannot give. There was Scott, about 2 or 3 miles above Cordell's, lost from one to two crops every year, except one; also Messrs. Watsons, adjoining Mr. Scott's, have lost several crops, and am unable to say whether they have been successful in raising crops where they were unprotected by levees; also Mr. Shunk, on the same tract—my impression is that he has lost crops of every year since he has been there; also Mr. Schaeler, Mr. Chatfield, Philip Shunk; also 3 Frenchmen, whose names I do not know; also Lamartine; also some 3 or 4 Americans in that vicinity, whose names I don't know, and Frederick or Ferdinand ——, Thos. Hall, Michael Hall—these all live between Scott's and Sacramento city; also Mr. Cook, Mr. Vail, Mr. Monger, Mr. Hamilton, or Leonard, who is in his place; also Mr. Green, Fred. Smith, Mr. Krauft, Mr. Lincoln, Mr. Cline, Mr. Shepherd, Mr. Cammack, and several others whose names I don't know, but the greater portion of them have also lost crops.

Quest. No. 14. Has there not been a crop made every year by those persons; if not, in what year did they fail to make a crop?

Answer. As a general thing, when crops are overflowed, any crops raised afterwards *are* generally been left without gathering.

Quest. No. 15. Don't you know that all the land east of the fort, except that north of the slough, is not subject to overflow?

Answer. I have not seen it overflow.

Quest. No. 16. Do you know the country between the city of Sacramento and A. D. Patterson's on the American Fork river, and south of said river?

Answer. I do.

Quest. No. 17. From your general knowledge of the country described in the last question, state whether in your judgment it is subject to overflow?

Answer. It is doubtful whether it does overflow.

Quest. No. 18. In the country between the mouth of Feather river and Cordell's, about which you have been testifying, cannot the ordinary crops of the country be raised in the majority of years?

Answer. By leveeing they can be raised every year, if the levees are large enough.

Quest. No. 19. If the southern line of the lands granted to Sutter should be established at the mouth of Cordell's slough, will it include the farm upon which you reside and claim?

Answer. It will include the farm, but not my claim or right. I bought my land from Sutter's Indian wife, with the remaining portion

of the tribe, for the sum of $800. These Indians held a document executed by Judge Hastings of Sutter, and signed by Jno. A. Sutter, stating that his Indian rancheria was the indisputable property by inheritance of the Waloc tribe of Indians, and requesting in the said document all persons to respect their rights as christianized and civilized Indians. The document was in writing. A man named Smith obtained it by some means, as affiant is informed, and I am unable to produce it.

Quest. No. 20. Do you hold that tract of land under or adverse to the claim of Capt. Sutter or his grantees?

Answer. Neither; I hold it by title from the Indians, and a possession for fifteen years.

Quest. No. 21. Have you in your possession, or do you claim to be the owner of any lot or tract of land within the boundaries described in question No. 2 of cross-examination?

Answer. I have no other land than that just described, and never have had any other in California. I don't own or claim any lots in Sacramento city.

Quest. No. 22. Have you at any time paid, or promised to pay, or promised to become liable for, any sum or sums of money whatever to be appropriated directly or indirectly for the purpose of procuring testimony or employing counsel to defend the claim of the settlers, or to defeat the grant or grants made to Capt. Sutter?

Answer. I have never made any contracts, or authorized any liabilities, by which I am involved with any direct interest in this case, but I have paid out some $200 in order to ascertain the southern boundary of the grant.

Direct Examination resumed.

Quest. No. 1. How long have you, and those under whom you claim, had possession of the lands you now occupy?

Answer. I have occupied the land since Dec., 1850, personally; I believe the Indians, from whom I bought, occupied it since 1835.

Quest. No. 2. Can grain crops be successfully cultivated on the strip of land described by you as lying between the Sacramento river and the high lands without protection from overflow by artificial levees?

Answer. They cannot with any kind of certainty or profit, on account of overflows.

Claimant by his attorney, Presly Dunlap, esq., objects to the whole of the foregoing deposition, on the ground of irrelevancy, incompetency, interest of the witness, &c., on all other grounds except those mentioned in the annexed agreement.

JAMES M. SANDFORD.

Sworn to and subscribed before me this 26th day of March, 1856.

SAMUEL CROSS,
Notary Public Sac. Co., Cal.

Deposition of R. D. Ferguson.

R. D. Ferguson, a witness produced on the part of the appellant, being duly sworn, deposes and says:

Quest. No. 1. What is your name, age, residence, and occupation?

Answer. My name Richard D. Ferguson, residence Sacramento city, and occupation is general trader, ranching, and buying and selling stock.

Quest. No. 2. Are you acquainted with John S. Fowler, of Sacramento city?

Answer. I am.

Quest. No. 3. In what month was the decision of the Sutter—

[This question is not asked.—S. Cross, notary public.]

Quest. No. 3. Did you have a conversation with John S. Fowler, of Sacramento city, subsequent to the decree of the board of United States land commissioners to settle land claims in the State of California, confirming the claim or claims of John A. Sutter for the confirmation to him of two grants for eleven and twenty-two leagues of land respectively, embracing within their limits the city of Sacramento, and purporting to have been made to him by certain officers of the Mexican government, relative to his (Fowler's) interest in the said grants, or either of them? If yea, state the conversation, and when and where this conversation was had.

Answer. Yes; Mr. Fowler said in substance that his time had now come; that in 1849 or '50 he had paid to Mr. John A. Sutter ninety thousand dollars, or thereabouts, of as pretty gold dust as ever had been dug in the mountains, for lots in Sacramento city, and land lying between the Sacramento and Feather rivers; and that all, or nearly all, of these lands and lots had been taken possession of by other parties without consideration or value, and through them he had been deprived of their use, and that he had never derived a dollar's benefit for the same; that they had destroyed his timber, cut his hay, and thereby had kept him so poor that he had scarcely been able to feed and clothe his family. He believed he would soon be able to assert his rights before the court, regain possession of his property, and recover for the damages done. In the same conversation he said that his possessions, or the portion of the claim which he purchased, would, if awarded by the courts to him, be worth half a million of dollars; that was about all he said; we talked but a few moments; I congratulated him on his success, and we parted. This conversation was a few days after the confirmation of the Sutter grants by the board of land commissioners, not more than three or four days afterwards; it was on the northwest corner of K and Sixth streets, in Sacramento city, that this conversation took place.

Cross-examination.

Quest. No. 1. How long have you resided in this State; when did you arrive here; and what has been your business?

Answer. I arrived here in July, 1849; have been here nearly seven years; and my business has been mining, ranching, dealing in stock and real estate.

Quest. No. 2. Have you in your possession, or under your control, or do you pretend to own any lots or tracts of land within the limits of the city of Sacramento, or of the grants or lands claimed under the grants to Capt. Sutter, or by his grantees; if so, do you claim the same adverse to or under said Sutter? State what lots or tracts of lands.

Answer. I have lots in possession holden under Sutter's title, and lots in the possession of others claimed by them, to which I have Sutter titles, lying in the limits of Sacramento city. I consider this contains a full answer to the question.

Quest. No. 3. What number of lots, and what are the numbers and description of lots or tracts of land in Sacramento city, which you hold or claim title to under Capt. Sutter?

Answer. Eight lots between S and P, and 10th and 11th streets; eight or ten lots between S and P, or P and U, and 12th and 13th, or 13th and 14th streets. I think I cannot swear positively, without looking at the records, as to the numbers. Part of lot No. 4, in block between K and L, and 5th and 6th streets, commencing on the southwest corner of K and 6th streets; thence running 40 feet west; thence 80 feet south at right angles; thence at right angles 40 feet east to 6th street; thence at right angles, along the line of 6th street, 80 feet to the place of beginning; also a fraction of lot 4, in the same block, commencing 100 feet south of the southwest corner of K and 6th streets; thence running 60 feet west; thence at right angles 20 feet south; thence at right angles 60 feet east; thence at right angles 20 feet north to the place of beginning. I cannot tell exactly the numbers of the other lots I own, without reference to the records, or the number of them.

Quest. No. 4. Have you all these lots in possession; and if not, how many of them have you not in possession?

Answer. Those described I have in possession.

Quest. No. 5. How many lots do you hold adversely to the claims of Sutter, and those claiming under him?

Answer. I cannot answer definitely; I have some.

Quest. No. 6. How many lots in the city of Sacramento do you hold adversely to the claims of Sutter, and those holding under him, or claiming under him, to the best of your recollection?

Answer. I believe I have 14 blocks enclosed; have the Sutter title to one or two of them—one, I believe; and another party or parties has in possession and claims one of them. There are 8 lots in each block; one or two of them has ten.

Quest. No. 7. Have you paid, or become liable to pay, or promised to pay, to any person or persons whatever, any sum or sums of money to be employed or used in employing counsel, or procuring testimony to be used before the board of land commissioners, or the district court, to procure the defeat of Capt. Sutter's grant?

Answer. In this case, now pending in the district court of the United States, between the United States and John A. Sutter, in order that full testimony could be obtained, and in order to forward the ends of justice as between the parties, and that all the evidence might be obtained that would place this case fairly before the court, and to secure the means of obtaining said information, I have agreed to contribute an amount for that purpose. I have agreed to contribute for this purpose the sum of $500 00.

Claimant objects to the whole of the foregoing deposition on the grounds of the irrelevancy of the testimony, the incompetency of the witness, and his interest in the result, and on all other legal grounds, except such as are mentioned in the agreement hereto annexed.

R. D. FERGUSON.

Sworn to and subscribed before me, on this 26th day of March, 1856.

SAMUEL CROSS,
Notary Public Sac. Co., Cal.

And the further examination of witnesses is, by consent of parties, adjourned until March 27th, 1856, at 10½ of the clock a. m., when it will be again resumed.

SAMUEL CROSS,
Notary Public Sac. Co., Cal.

March 27th, 1856. And now come the parties by their attorneys before named, and resume the examination of witnesses as follows.

Deposition of Charles Brockway.

Charles Brockway, a witness produced on the part of the appellant, being duly sworn, deposes and says:

Quest. No. 1. What is your name, age, residence and occupation?

Answer. My name is Charles Brockway; age 45 years; residence near Sacramento city. I am a blacksmith by trade; at present I am working at farming, gardening, &c.

Quest. No. 2. Are you acquainted with the general reputation, for truth and veracity, of John S. Fowler, in the neighborhood where he resides?

Answer. It is not good; I am.

Quest. No. 2. What is his reputation, for truth and veracity, in the neighborhood where he resides?

Note.—Here the witness inquired what is meant by the term "neighborhood;" and the counsel for appellant explained that by "neighborhood," he *he* means the vicinity where he resides, and his general acquaintances. Thereupon counsel of appellee objects, that if the witness has not intelligence enough to know the meaning of the word "neighborhood," he is not competent to testify in this case. The witness then answers, not good.

Quest. No. 3. From your knowledge of his general reputation for truth and veracity in the neighborhood in which he resides, would you believe him oath?

Answer. I would not.

Cross-examination.

Quest. No. 1. When did you come to this State; where have you resided since, and what has been your business?

Answer. I came to this State in 1849; I have resided since most of the time on the corner of 11th and K streets; I sold goods there for two or three years; I made that my home until within the last 9 or 12 months. One year I was gone to the States, and one year I have been working the garden; I have been working the garden for about 9 months.

Quest. No. 2. On what do you found your opinion of Fowler's reputation for truth and veracity?

Answer. Well, I have heard him publicly denounced for a "perjd" man, and a "perjd" villain.

Quest. No. 3. By whom have you heard him denounced; when, and where?

Answer. I heard him denounced by Mr. Colby at the Noyes house, on the public square; I cannot now state positively what day I heard this; that is all.

Quest. No. 4. Is Mr. Colby, who is referred to in your answer, not a settler on the lands claimed by Sutter and his grantees?

Answer. Not to my knowledge, for I don't know where he lives.

Quest. No. 5. From general report and from your knowledge of Colby, do you not know that he claims lands adversely to the claims of Sutter?

Answer. I have heard that he did; but I never heard Mr. Colby say so.

Quest. No. 6. Do you form your opinion of Mr. Fowler's reputation for truth and veracity on what you heard Mr. Colby state alone?

Answer. No, sir.

Quest. No. 7. Then upon what do you found it?

Answer. That I heard him swear in court to things that I did not believe; I heard Mr. George Foster say there that he swore to a lie, and he knowed it.

Quest. No. 8. In what court, in what case, and when did he testifiy; who were the parties to the suit, and what was the subject in controversy?

Answer. The court was before Monson. It was Monson's court. The parties were Sanders, plaintiff, and Fox, Charley Mack, and Foster, were the defendants. The suit was for the possession of a piece of land. I was not a party defendant in that suit.

Quest. No. 9. Was the Mr. Foster, whom you name as a party defendant in this suit, the same who you heard state that Mr. Fowler had sworn falsely on that trial?

Answer. He is the same.

Quest. No. 10. Have you heard anybody else; if so, say who, when, and where?

Answer. I have heard such remarks, but cannot now recollect persons or places, because I paid so little attention to it.

Quest. No. 11. Have you stated all the information you have on the subject?

Answer. I do not recollect any more.

Quest. No. 12. Was not the suit of Sanders brought against Fox and others, of which you have just spoken, brought to recover the possession of lands held by the defendants adverse to the rights of the plaintiff in that suit, who you understood to hold the same under Sutter?

Answer. To the best of my knowledge it was.

Quest. No. 13. Have you signed the petition, representation, or any other document to be presented in any of the courts, or to the Commissioner of the Land Office, or to any other officer or tribunal, for the purpose of defeating the grants made to John A. Sutter, or for the purpose of discrediting the testimony of John S. Fowler; if so, what is the character of that paper; have you it in your possession or under your control?

Answer. I signed a petition to Congress for the benefit of settlers in California; I also signed a petition to the Attorney General to appeal the Sutter case; I think that is all.

Quest. No. 14. Do you own, claim, or pretend to claim, or have you in possession, any lots or tracts of land within the limits of those lands claimed by Capt. Sutter or his grantees, as being within the limits of the lands claimed as granted to him and his son by the Mexican government; if so, how much, and where are the same situated?

Answer. I have three lots in Sacramento city; I am in possession of one hundred and sixty acres outside of the city.

Quest. No. 15. Do you hold those lands, or any of them, under deed or conveyance from Capt. Sutter or his grantees?

Answer. I bought some of those from his agent in 1849, but since then there have been two or three different claimants to them.

Quest. No. 16. Did you ever pay him or his agent the price and receive his deed; if so, what are the lots or lands?

Answer. I paid Hardin Bigelow $500 00 in 1849, for fraction 4, in lot 4, corner of 11th and K, and got a deed for it. That is all. I understood in 1849, by his representations to me, that Hardin Bigelow was Sutter's agent. The deed was acknowledged before Schoolcraft, the receiver.

Quest. No. 17. Do you hold the balance of the lands and lots spoken of by you adversely to Capt. Sutter; if so, by what title or claim?

Answer. The title of the government; I hold it under government. I cannot answer that I hold adversely to Sutter.

Quest. No. 18. When did you get it from the government, and how have you ever paid the government any sum therefor, and what sum, and what government?

Answer. I settled on it (the city lots) in 1849; fenced and enclosed and occupied for my own use and benefit the 160 acres I settled on in the spring of 1851, and claim that under the pre-emption act of California; I have not paid anything to the government; they are not in the market, to my knowledge.

Quest. No. 19. By whom were you subpœnaed to attend here, or if at all?

Answer. I was not subpœnaed to attend here; I was requested to come by Dr. Pratt, Mr. Fox, and two or three others, and they wanted to know if it would be necessary to subpœna; I said not.

Quest. No. 20. How far do you reside from Mr. Fox; do you not know his christian name, and how long have you known him?

Answer. I reside about ¼ of a mile from him now; I do not know his christian name; I have known him by sight for three years.

Quest. No. 21. Is the Mr. Fox alluded to by you here, the same Mr. Fox who testified in this case last week before G. Penn Johnston, commissioner?

Answer. Not to my knowledge, further than what I saw through the paper and what he told me. He told me that he had been up before the court or magistrate.

Quest. No. 22. Did he tell you what he had testified to in that examination?

Answer. I cannot say positively, but recollect this much, that he said he would not believe John S. Fowler.

Quest. No. 23. Did not the parties who requested you to come here to-day, state to you that they wished you to testify in regard to Fowler's character, and that you should state that you would not believe him under oath?

Answer. They did state to me that they wished me to testify as to Fowler's character; they did not request me to state that I would not believe him under oath. There might have been such a conversation, but I have no recollection of any.

Quest. No. 24. Have you paid, or become liable to pay or promised to pay, to any person or persons whatever, any sum or sums of money, to be employed or used in the employment of counsel or procuring testimony to be used before the board of United States land commissioners, or the district or other court or tribunal, to procure the defeat of Capt. Sutter's claim?

Answer. I have not.

Quest. No. 25. Do you belong to any association or body of men formed for the purpose of defeating or delaying the claim of Captain Sutter?

Answer. In 1850 I gave either $50 or $75 towards establishing a press here that would advocate the cause of the settlers. About three years ago I, with others, gave a man some money to get a man to go to San Francisco to see what evidence could be procured.

Direct Examination resumed.

Quest. No. 1. What do you mean by the term "perjd," as used by you in response to question No. 2 of the cross-examination?

Answer. I understand the meaning to be, where a man goes into court and testifies intentionally to what he knows is not so.

Quest. No. 2. What did Mr. Foster say Fowler falsely con-

cerning in the conversation you had with him, mentioned in response to question No. 7 of the cross-examination?

Answer. Mr. Foster did not tell me what the conversation was; that he swore to a lie. I understood Mr. Foster to say that he had had a conversation with Mr. Fowler, and that he (Fowler) had gone there and swore to something else; that he had stated things in his evidence as having passed in conversation between them which never occurred, and what he testified was false.

Cross-examination resumed.

Quest. No. 1. When did you hear Fowler swear falsely, if ever, and about what did he testify?

Answer. He swore in Monson's court to things that I did not believe; and others told me that he swore falsely.

Quest. No. 2. Did you ever hear him swear falsely to your own knowledge?

Answer. To the best of my knowledge he did.

Quest. No. 3. What did he swear; when, where, and how do you know that he swore falsely?

Answer. He swore that these wild lands below Sacramento city was worth $5.00 per month, making $60.00 per year per acre rent. This was in the district court of the sixth judicial district, in the case of Sanders against Fox et al. I know by experience in cultivating lands adjoining for the last five years.

Quest. No. 4. Did he swear that all the wild lands below the city were worth that?

Answer. He swore that this certain tract of land was worth that, and the land that I cultivated was land of the same quality.

Quest. No. 5. Describe the tract of land about which he testified, and its quality, and the number of acres, and where situated.

Answer. The land lies about ¾ of a mile below "Y" street of Sacramento city, and south about 25th street. The number of acres in dispute on that trial was, I think, about fifty.

Quest. No. 6. State on your own knowledge, whether Fowler did not think the land was worth the amount he testified to?

Answer. I can't answer this question.

Quest. No. 7. Do you know that Foster told you the truth when he said that Fowler swore falsely; if so, how do you know it?

Answer. Mr. Foster remarked to me that he (Fowler) had sworn falsely, in a conversation they had had together. I do not know that it was the truth.

Counsel for claimant objects to the whole of the foregoing deposition on the grounds of irrelevancy, the incompetency of the witness, and of his interest in the result, and on all other legal , except such as are mentioned in the agreement hereto annexed.

C. BROCKWAY.

Sworn to and subscribed before me, on this 27th day of March, 1856.

SAMUEL CROSS,
Notary Public Sac. Co., Cal.

Deposition of George R. Nisbet.

George R. Nisbet, a witness produced on the part of the appellant, being duly sworn, deposes and says:

Quest. No. 1. What is your name, age, residence, and occupation?

Answer. My name is George R. Nisbet; my residence about three miles below this city on the upper Stockton road; I am farming.

Quest. No. 2. Are you acquainted with John S. Fowler?

Answer. I know him when I see him; I have had one interview, but not much personal acquaintance with him.

Quest. No. 3. State whether you have ever heard John S. Fowler, in conversation with yourself or any other person, claim to be the owner of any lands included within the boundaries of the lands claimed as within the grants of John A. Sutter under title from John A. Sutter; if yea, state when and where this conversation occurred, and what he (Fowler) said?

Answer. I heard him say that he claimed under the Sutter title; this was about a year ago, at his residence on what is generally called "the Ridge" or "Poverty Hill." I suppose it is in this city. Myself and a friend went to Fowler to buy a tract of land within the lines described in Sutter's petition; he refused to sell that particular farm, as he had selected that for his home, but he offered to sell any other in that neighborhood which he might desire. He mentioned the price the land cost him, but I don't now recollect the sum; also named somewhat about the boundaries—said that he claimed beyond the mounds, and in that case he would include my ranch. I then mentioned that I did not believe I was on the Sutter claim at all. He said I was, but he would compromise, or there would be no trouble in compromising by those who had gone on in good faith. It was my friend who wanted to purchase. Fowler said that he bought this land from Sutter and had paid a large price for it. I cannot say positively that he said he bought directly from Sutter, or from those holding under Sutter.

Cross-examination.

Quest. No. 1. How much land does Fowler hold under the Sutter claim, or how much since 1852?

Answer. I do not know; I don't know that he holds any; he said he did.

Counsel for appellee objects to this deposition, on the grounds of irrelevancy.

G. R. NISBET.

Sworn to and subscribed before me on this 27th of March, 1856.

SAMUEL CROSS,
Notary Public Sac. Co., Cal.

And now the further examination of witnesses is adjourned until March 28th, 1856, at 10½ o'clock a. m., by consent of parties.

SAMUEL CROSS,
Notary Public Sac. Co., Cal.

Friday morning, March 28th, 1856. Now come the parties by their attorneys heretofore named, and the examination of witnesses is thereupon resumed as follows:

Deposition of Thos. J. Hall.

Thomas J. Hall, a witness produced on the part of the appellant, being duly sworn, deposes and says:

Quest. No. 1. What is your name, age, residence, and occupation?

Answer. My name is Thomas J. Hall; age 37 years; residence Sacramento county, most of the time; my occupation is farming and mining; I was originally a physician.

Quest. No. 2. Are you acquainted with the topography of the country lying on and near the Sacramento river, below the mouth of Feather river, to ten miles south of Sacramento city; if yea, how long have you been acquainted with the land?

Answer. I am only acquainted with the land below the mouth of the American river; I have known it since 1849; have been living upon it the greater part of the time, below the American river; I am well acquainted with the topography of the land for ten miles below the American river.

Quest. No. 3. What is the altitude of the bluffs bordering the land on the east of the Sacramento river, liable to overflow?

Answer. I cannot state positively, but I would suppose that for the whole length they would average some fifteen or twenty feet.

Quest. No. 4. About how far are those bluffs from the river, on an average, and state what part of the land is liable to overflow, from the impulse, currents, and swellings of the river?

Answer. Probably the average distance would be about two miles, as near as I could estimate; with the exception of a high knoll here and there, it is all overflowed.

Quest. No. 5. What would be the average depth of the water during ordinary seasons of overflow, on the land liable to overflow or inundation; how long does the water usually remain; how long after does the overflow happen, and what improvements are necessary to make the land available? State your means of knowledge.

Answer. I think about five feet; in the winter of 1849, and spring of 1850, there were two different times when the water overflowed the banks; at that time the water remained in all about five weeks, during both overflows, as near as I can recollect; I cannot tell exactly how long the water remains during overflows, but, to the best of my recollection, it is about two weeks each time that it runs over the banks of the river. The overflows continue about two months, and on portions of the land it remains all the time. Before the levees were built a greater amount of land remained under water during the whole of the season than at present. A levee two feet high along the bank of the river would keep the water out, excepting where there are sloughs, which would require a greater levee. I speak generally. The river bank is some fifteen or twenty feet higher than the land behind it. I am inti-

mately acquainted with the facts I state, from personal knowledge of the same.

Quest. No. 6. What extent of levee has already been constructed south of Sacramento city?

Answer. I suppose at least nine miles. In this there is not a continued levee; some people have part of their places leveed, others the whole.

Quest. No. 7. What is the altitude of Sacramento city, as compared with the land, or most of the land, so overflowed?

Answer. I think it is higher. It will average at least seven feet higher than the average of the lands below. It is not any higher than the banks of the river, except at the plaza. In fact it is not as high, because this was overflowed by back-water, and the banks were not.

Quest. No. 8. State what artificial improvements have been made in and around Sacramento city for the purpose of securing the lands within the city from overflow, and making it available for business purposes; also state the costs of those improvements, if you know what the costs have been.

Answer. The land has been leveed, and the streets, or a portion of them, been filled. I don't know what the cost has been. The levee runs round three fronts of the city embracing the same, and it extends back to the high lands.

Cross-examination.

Quest. No. 1. When did you come to the State, where have you resided since, and what has been your business?

Answer. I came in 1849. Part of the time in Sacramento co., part in the mountains, and one year in the States. I spent a year in the States, about six months in all at the mines, and the balance of the time in this county. I reside now in a straight line 6 miles from the American river, on the banks of the Sacramento river. I have resided there (with the exception of the 18 months) since Sept., 1849. It is a southerly direction from Sac. city.

Quest. No. 2. What portion of country did you speak of in your answer to question No. 2?

Answer. That lying below the American river and back to the high lands, down ten miles. In a straight line it is below Cordell's slough, about two miles, I think.

Quest. No. 3. What supposed number of acres have annually been, or would have been, overflowed in absence of a levee lying north of Cordell's slough and south of the American river?

Answer. Counting Cordell's slough 8 miles, and the average width two miles, then 640 have to be multiplied by 16, to give the amount of acres; then subtracting probably 75 acres from that for knolls, all the balance would be under water.

Quest. No. 4. Has the tract above described overflowed every season since you have known it; if so, when and what years?

Answer. By far the greater amount of land alluded to above would

have been under water every year, provided there had been no levee. In the winter of 1849, and spring of 1850, there was what is called a general overflow. In the winter of 1850, and spring of 1851, the inundation was partial. The next year it was complete. In the year following I was in the States. Last season there was a general overflow. It has not been overflowed in 1856 yet.

Quest. No. 5. At what point of the tract described is the land seven feet below the banks of the river, and how much of the land?

Answer. I suppose that half the area of Sacramento city is five feet below the river banks; a large portion of that land below the city is twenty-five feet; I suppose, at a rough calculation, two thousand acres; outside the lakes on this tract I have seen it twelve or fifteen feet deep.

Quest. No. 6. Is not the district of which you speak as being twenty-five feet below the banks of the river, a lake that never goes dry, or from which the water never recedes?

Answer. The particular portion alluded to, lies below the town of Sutterville. It is the lake. The area of that lake at ordinary stage of water cannot be estimated exactly, as it depends on the stage of water. On the 1st day of May, of each year, there are, I suppose, about $\frac{9}{10}$ of all the country would be included within that lake.

Quest. No. 7. What is the width of the overflowed lands on a line running east, parallel with the American river from K street, "R" street, and at the town of Sutterville, opposite the large brick hotel?

Answer. I cannot state positively about the distance at the American river. At "K" street it is about 2 miles; at "R" street about 2 miles; at Sutterville, it is $\frac{1}{2}$ or $\frac{1}{4}$ of a mile.

Quest. No. 8. What portion, and how much of this land described, remains overflowed by the swelling of the currents and impulse of the river, all the time?

Answer. Without leveeing, I suppose about a fifth or a sixth.

Quest. No. 9. Does any of the land within the tract of *of* country you have been describing, remain overflowed except lakes and lagunas?

Answer. No, sir.

Quest. No. 10. What portion of the land is covered by lakes or lagunas?

Answer. I suppose probably about one-fourth.

Quest. No. 11. Can a crop in ordinary years be made without a levee, on the lands you have been describing?

Answer. No, sir.

Quest. No. 12. Have you not seen crops growing on it every year except 1849, since you have known it?

Answer. Not without leveeing; I have seen crops tried every year.

Quest. No. 13. To your own knowledge, have not crops been raised every year?

Answer. Not without leveeing.

Quest. No. 14. Is the whole of the country you have been describing leveed?

Answer. Most of it.

Quest. No. 15. What portion? Describe it minutely.

Answer. From "I" street to McGregor's ferry, has been leveed by the city. This is on the bank of Sacramento river. Then Hamilton's ranch, commencing about 40 rods below the city levee, is leveed for about a half a mile; then Vail's old ranch is partly leveed; Munger's ranch is all leveed. Each claims a half mile, more or less. Hooker and Ferris' ranch is leveed; Sandford's ranch also; Eureka ranch also; Ross's ranch partly; Watson's, partly; Scott's, the whole. There are some 4 or 5 ranches below that, which all have more or less levee. That includes the whole country.

Quest. No. 15. If you have passed over the whole country between the mouth of American river and Sutterville, or McGregor's ferry, have you not seen vegetables growing each year, between the levee and the Sacramento river?

Answer. I have not seen vegetables growing there; I have passed over the country at various seasons of the year.

Quest. No. 16. Do you own, or claim to own, or have you in possession, any lands within the limits of the boundaries of lands claimed by Capt. Sutter and his grantees?

Answer. Having been with Capt. Sutter's surveyor, Viorget, when he made the survey for him, or when he defined the southern boundary, and knowing that to be about four and a half miles from the mouth of the American river, and this survey being made in 1855, I have every lawful reason to believe that I am outside of Capt. Sutter's grant; his grantees have told me that I was not within the boundaries of the grant.

Quest. No. 17. What grantee told you so?

It was either Gen. A. M. Winn or Mr. Gillespie.

Quest. No. 18. If Sutter's southern line were established to run northeasterly from the mouth of the Cordell slough, would it not include the land in which you are in possession?

Answer. I do not own or claim to own the land on which I live.

Quest. No. 19. Who does own it?

Answer. I sold it to G. M. Hall; he is my brother; I sold to him previous to my visit to the States, about $2\frac{1}{2}$ years ago.

Quest. No. 20. How much did your brother pay you for that land?

Answer. He has paid me twenty-three hundred dollars.

Quest. No. 21. Have you in your possession, or under your control, lands lying north of Cordell's slough, on the Sacramento river?

Answer. I have none that I claim as my own.

Quest. No. 22. How do you know that Viorget was Gen. Sutter's surveyor?

Answer. He told me so himself—that is, Viorget told me so.

Quest. No. 23. Do you know of your own personal knowledge of Capt. Sutter's ever employing Viorget to do any surveying whatever; if so, when?

Answer. All I know about it is what Viorget told me.

Quest. No. 24. How much money was raised by the settlers, if any,

and paid to Viorget, and before spoken of by you, for making the survey and running the lines in the summer or fall of 1855?

Answer. The settlers on both sides of the survey, anxious to know the southern boundary where Capt. Sutter's grant really did exist, raised $300 00, I think, and paid him for making this survey; I paid part of it for my brother; individually I did not.

Quest. No. 25. What did Viorget tell you in relation to his being Capt. Sutter's surveyor?

Answer. He said he was Capt. Sutter's surveyor at a certain time, and run this line; that they waded from the boat to the river bank near where this tree stands, and run from there, making that the point of beginning, running a little south of east, at least not due east, to a cluster of timber situated back on the high lands; that he remembered the slough distinctly from its peculiar curve; and that the tree on the bank of the river from which they started was not an oak, but a sycamore.

Quest. No. 26. Did Capt. Sutter ever tell you that Viorget was his surveyor?

Answer. He did not.

Quest. No. 27. Did Viorget state in your hearing that he run out in 1841, or at any other time, the lines of the grant to Sutter?

Answer. He did.

Quest. No. 28. Are the lands within the limits of Sacramento city and the adjacent country included within the boundaries described to you by Vioget as the boundaries of Capt. Sutter's grant, as surveyed by him?

Answer. He embraced the two league grant south of the American river, having for its boundaries such as he then described, to which he made an affidavit, containing the description of this southern boundary.

Attorney for appellee objects to the foregoing deposition on the ground of irrelevancy and all other legal objections, except such as are mentioned in the agreement hereto annexed.

THOS. J. HALL.

Sworn to and subscribed before me, on this 28th day of March, 1856.

SAMUEL CROSS,
Notary Public Sac. Co., Cal.

Deposition of Geo. W. Foster.

George W. Foster, a witness produced on the part of the appellant, being duly sworn, on oath, deposes and says:

Quest. No. 1. What is your name, age, residence, and occupation?

Answer. My name is George W. Foster; residence in the town of Granite; I am merchandising.

Quest. No. 2. Are you acquainted with the general reputation for truth and veracity of John S. Fowler, of Sacramento city, in the neighborhood where he resides?

Answer. I am acquainted with him, and have been since 1849. I am acquainted with his general reputation for truth and veracity in the neighborhood where he resides.

Quest. No. 3. What is that reputation?

Answer. It is bad.

Quest. No. 4. From his general reputation for truth and veracity, would you believe him on oath?

Answer. I would not.

Cross-examination.

Quest. No. 1. When did you come to this State; where have you resided since; and what has been your business?

Answer. I arrived here in 1849. I have resided during the larger portion of the time in Sacramento city and vicinity. I merchandised for three years; farmed one year; and merchandised again last year.

Quest. No. 2. On what do you form your opinion of Fowler's reputation for truth and veracity?

Answer. From personal transactions and public opinion.

Quest. No. 3. What were those transactions alluded to in your last answer?

Answer. In 1849 I went to the bay in company with him and others on board a sailing vessel; we were 12 or 14 days, I think, in getting down to the bay; I returned to this city again. Mr. Fowler commenced building the "City Hotel," and I sold him about $300 00 worth of hard-wood tables; upon settling for them, there were some hard words passed between us, but he paid me for them. I also had, at that time, other goods which I valued at $125 00, which I offered to sell him; he told me that he did not wish to buy, but if I would leave them he would try to sell them for me, and charge me no storage. I went to the mines; was gone nearly three months; and returned and called to see him about the goods I had left with him, and he said he had no knowledge, and knew nothing about them. I endeavored to remind him by asking who he got the tables of in the room, and then he did not acknowledge knowing me. I believe he lied in denying that he knew me or my goods. I saw Mr. Fowler, at different times, after that; I saw him at Sutterville; I prevented him from putting up a house down there. About a year and a half ago I heard him testify in an action in the district court in and for the county of Sacramento, wherein Sanders was plaintiff, and Fox, Charly Mack, and Geo. W. Foster, were defendants. The trial was had some two or three months ago. The suit was about fifty acres of land. He stated to the court, and pointed to me, that "I do not know the gentleman's name." That "on his demanding possession of the land in controversy, (I) called him a robber, a thief, and a pirate," which was false. I called him a broken down speculator; that is, he was denying in court that he knew me by name, when he had sworn a few minutes before that he went to my ranch to demand possession from me; that he went down as a witness, with another gentleman, to demand possession of me. He also testified that the value of the land was fifty dollars per acre; and before he left the stand, he swore that the rent of the same ground was worth five dollars per acre per month. That is all.

Quest. No. 4. Were you not a party defendant to that suit?

Answer. I was.

Quest. No. 5. Did the plaintiff recover?

Answer. He did not recover from me. There was a verdict rendered in favor of the plaintiff.

Quest. No. 6. Was that suit the same above spoken of, instituted by the plaintiff to recover the possession of a certain tract of land held by the defendants adversely to the plaintiff, who claimed title under Capt. Sutter?

Answer. It was the same suit; it was the same land; it was instituted by plaintiff to recover possession of it.

Quest. No. 7. Have you stated all the facts and circumstances on which you found your belief of Fowler's general character for truth and veracity?

Answer. All that I recollect, except public opinion.

Quest. No. 8. How do you know that his character is bad by public opinion, and how do you know that opinion?

Answer. By common report.

Quest. No. 9. How many men have you ever heard say, and *and* who are they, that they would not believe him on oath?

Answer. I don't recollect any particular number; I have heard different men. There are C. S. Hoyt, Mr. Brockway, Mr. Lawless, Mr. Lockwood; these are all I can recollect, although I have heard others make the same remark. I also heard Patrick King say so.

Quest. No. 10. Where does each one of these named live?

Answer. Mr. Hoyt lives near the Sand Hills, at the burying ground, in Sacramento city; Mr. Brockway lives about ¾ of a mile south of Sacramento city; Mr. Lawless lives at Dry Creek now—he used to live on the ranch adjoining me; Mr. Lockwood lives in Sutterville; I don't know where Mr. King lives—he used to live at Southwick's Dairy.

Quest. No. 11. Would the opinion of these form, in your opinion, public opinion or common report?

Answer. These, with others stated in public, would. I heard him denounced in public by public speakers.

Quest. No. 12. What public speakers denounced him?

Answer. I heard it at two different times on the public square, in this city; I did not know them; I think one was a Brighton man, and I think his name was Colby; I am not positive.

Quest. No. 13. Were, or are not, all the persons above enumerated as known to belong to the party called settlers, and have you not heard them so announce themselves?

Answer. I think they are all settlers.

Quest. No. 14. Who requested you to come here to testify?

Answer. I do not know his name; he is a man about five feet 10 or 11 inches high, and is agent for Wells, Fargo & Co.; he called on you at Granite city; he delivered me a letter from the U. S. attorney, or one authorized by him, requesting me to come. The letter was signed by one McCullough.

Quest. No. 15. Did you request Mr. Brockway to come before Mr. Cross to testify in this case?

Answer. I did not.

Quest. No. 16. Did Fowler ever recognise you after 1849; if so, when and where?

Answer. He has passed the time of day with me, and called me by name at different times, since 1849.

Quest. No. 17. *Dou* swear positively that Fowler did know you at the time he testified on the trial in the case of Sanders vs. Fox et al.?

Answer. He stated to the court that he knew me, and had come down as a witness to the demand for possession; I swear that I believe he knew me.

Quest. No. 18. Do you own, or claim to have, or in possession of, or claim to have an interest in any lots or tracts of land within the limits of the lands claimed by Capt. Sutter or his grantees; if so, where, and how much?

Answer. I answer, no.

Quest. No. 19. Where have you any?

Answer. I have 320 jointly with another at the Johnson Cut-off, 15 miles above Placerville; I also have mining claims at Granite city; the Green Valley ranch, on the Hangtown road, I suppose belongs to me; I have none, and claim none, in Sacramento city or its vicinity.

Quest. No. 20. Do you now, or have you heretofore, belonged to any body of men or association formed for the purpose of defeating any Mexican grant or grants?

Answer. I do not; If I ever did belong to any, I have forgotten it; I think I never did.

Quest. No. 21. Have you paid, or become liable to pay, or promised to pay to any person or persons whatever, any sum or sums of money to be employed or used in the employment of counsel, or procuring testimony to be used before the board of United States land commissioners, or the district or other courts or tribunal, to procure the defeat of the Sutter claim?

Answer. I believe not a dollar in any shape whatever.

Quest. No. 22. Are you positive you have not?

Answer. I am positive I have paid nothing; I have not promised any on the Sutter title.

Quest. No. 23. What claim have you promised for?

Answer. It is a miner's claim at Granite city.

Quest. No. 24. Have you relinquished all your right to the land of which you spoke, that the suit was about?

Answer. I have.

Quest. No. 25. Have you ever owned any lands or claimed any lands in or around Sacramento city?

Answer. I have occupied lands in the city, and also below the city; I claimed the right of occupying them; they were wild lands; those in the city I disposed of in 1853; that south of the city I disposed of about a month ago; I did not dispose of any for the purpose of becom-

ing a witness in this case; I did not know till yesterday that I was to be a witness in the case.

The counsel for the appellee objects to the foregoing deposition on the grounds of irrelevancy and incompetency of the testimony, because it was evidently given under prejudice of the witness, and on all other legal grounds not mentioned in the annexed agreement.

GEORGE W. FOSTER.

Sworn to and subscribed before me on this 28th day of March, 1856.

SAM'L CROSS,
Notary Public Sac. Co., Cal.

And now the further examination of witnesses is adjourned until March 29th, 1856, at 9½ o'clock a. m.

SAMUEL CROSS,
Notary Public Sac. Co., Cal.

Saturday morning, March 29th, 1856. Now come the parties by their attorneys before named, and the examination of witnesses on the part of the appellants is resumed as follows:

Deposition of Sam'l Norris.

Samuel Norris, a witness produced and duly sworn on behalf of appellants, deposes and says:

Quest. No. 1. Did you ever have a conversation with John A. Sutter in reference to an application made by him to the government of California for a grant of land to his son? If yea, when and where did that conversation occur, and what did Capt. Sutter inform you concerning that matter?

Ans. I don't remember when and where the conversations took place. He told me that he had asked for the Russian settlements on the coast for his son. I talked with him several times about it. Capt. Sutter was in possession of the premises at the time—that is, he had an agent there—these settlements, Fort Ross and Bodega; that is, they were all one settlement, but the buildings were some miles apart; they are seven leagues apart. The first conversation I had with Sutter about it was in 1844. I also talked with him again in 1847 about it, and he always claimed for his or in the name of his son—that is, those premises.

Quest. No. 2. Did you ever hear, prior to the year 1847, of a grant made by the Mexican government to John A. Sutter and his son for twenty-two leagues of land described as the surplus of land within the limits as claimed by him of his original grant of eleven leagues? If yea, state what your information was concerning it.

Ans. I did not; I never heard of any other, but I had an impression that he had the eleven league grant. I don't know how I got this impression.

Cross-examination.

Ques. No. 1. Did you ever know whether Sutter claimed under one or more grants?

Ans. I did not.

Ques. No. 2. Did you ever hear of any one dispute his title to the lands in which he was in possession of, or claimed title to, before the treaty of peace of Guadaloupe Hidalgo, between the United States Government and the Republic of Mexico?

Ans. I don't remember whether I have or not; I don't recollect.

Ques. No. 3. At and before that period, according to the best of your recollection and belief, was not his title recognised by the inhabitants of the country as a valid one?

Ans. I don't know; I never knew he had any title. People generally said he claimed it.

Ques. 4. Did you ever have any conversation with Capt. Sutter in relation to his grant for the Sobrante to himself and son?

Ans. I don't recollect.

Ques. 5. Do you know John S. Fowler; and how long have you known him?

Ans. I have known him since 1847.

Ques. 6. Are you acquainted with his general character for truth and veracity?

Ans. I am.

Ques. 7. From your knowledge of him personally, and from general character, would you believe him under oath?

Ans. I would; I never heard his veracity doubted until the question came up in this Sutter case.

SAM'L NORRIS.

Subscribed and sworn to before me this 29th day of March, 1856.

SAMUEL CROSS,
Notary Public Sac. Co.

Deposition of John Prentice.

John Prentice, a witness produced on the part of the appellant, being duly sworn, on oath deposes and says:

Ques. No. 1. What is your name, age, residence, and occupation?

Ans. My name is John Prentice; residence in Sacramento city; my occupation is surveyor; my age is 55 years.

Ques. No. 2. How long have you been acquainted with the land bordering on the Sacramento river, below the Feather river?

Ans. With some parts of it ever since August, 1849. The land I was acquainted with in 1849 was Sacramento city. In 1850 I became acquainted with the lands above and below the city—for some 6 to 10 miles above and below—and as far east as the high lands.

Ques. No. 3. Describe the topography of the country, and give the particular description of the overflowed land, and land liable to overflow from the swellings and currents of the river.

Ans. The bank of the river is higher than the land back of it; it slopes off from the bank, from two to four feet to the Tulares. The bottom land extends eastwardly, from a quarter of a mile to a mile and a half and, in some, two miles from the river; this land within these limits is all liable to be overflowed in time of flood; in the winter and spring in 1849, and in the winter of 1852 and 1853, I have known floods here—probably 1849 should be struck*ed* off, as the flood there intended occurred in January, 1850. A part of these lands are Tule lands and part are grass lands.

Cross-examination.

Ques. No. 1. Cannot a crop in ordinary years be made upon the lands about which you have been testifying?

Ans. It can on a part of them, and on a part it cannot; it would be the smallest portion it would not.

Ques. No. 2. Is not that portion on which a crop cannot be made in ordinary years covered by sloughs, lakes, and lagunas?

Ans. I think the greater part of it is.

Ques. 3. What has been the average continuance of each overflow since you have known the country, taking one year with another?

Ans. From two to three months.

JOHN PRENTICE.

Sworn to and subscribed before me, on this 29th day of March, 1856.

SAMUEL CROSS,
Notary Public Sac. Co., Cal.

Deposition of Chas. W. Hoyt.

Charles W. Hoyt, a witness produced on the part of the appellant, being duly sworn, on oath deposes and says:

Ques. No. 1. What is your name, age, residence, and occupation?

Ans. My name is Charles W. Hoyt; residence, Sacramento county; occupation, drayman and gardener.

Ques. No. 2. Are you acquainted with the general reputation of John S. Fowler for truth and veracity in the neighborhood where he resides?

Ans. I know nothing that is very definite in relation to his character; I am not well acquainted with him.

Ques. No. 3. To what extent are you acquainted with his general character?

Ans. No farther than the remarks of others in relation to him.

Ques. No. 4. What is that reputation, as you learn it from others?

Note.—Counsel for the appellee here objects to these questions Nos. 3 and 4, on the grounds of their being leading. And the witness answers quest. No. 4 as follows:

It has not been favorable, as to his character and veracity—I mean to say, that it has not been favorable as to veracity. I have occasionally

heard it remarked by persons that they would not believe him under oath.

Ques. No. 5. How long have you been acquainted with John S. Fowler, and through what space of time have you heard his character spoken of?

Ans. I have been somewhat acquainted with him for about a year; it has been mostly within that space of time which I have heard his character spoken of.

Cross-examination.

Ques. No. 1. How long have you lived in this State, where have you resided, and what has been your business?

Ans. Since 1849 I have lived in this State most of the time—in this city and vicinity since 1850. I have been principally in keeping dairy.

Ques. No. 2. From what source of information and upon what do you *do* form your knowledge of Fowler's general character for truth and veracity?

Ans. I have heard him spoken of by several, viz: Warren, who lives on the levee below Sibby's; Cabels, who is now dead; G. W. Foster, who lives at Granite city; Charles Brockway, who lives immediately below the city, and others. I am not positive as to other names.

Ques. No. 3. Have you answered fully as to the last question?

Ans. I know of no more satisfactory information than I have given as to his character.

Ques. No. 4. Do you form your opinion of a man's general character for truth and veracity upon what you have heard four men say?

Ans. I do, when I have no reason to believe otherwise.

Ques. 5. Did you ever hear his character impeached at any time or place?

Ans. I have not.

Ques. No. 6. Do you own or claim to own, or have you in possession, any lots or tracts of land lying within the limits of the lands claimed by Sutter or his grantees?

Ans. I hold possession of some land just below the city of Sacramento.

Ques. No. 7. Have you not settled upon a tract of land including the graveyard belonging to the city of Sacramento?

Ans. I never have settled on any such land, nor occupy or improved any such.

Ques. No. 8. The land on which you reside, how and by what right do you hold it?

Ans. I settled upon it and hold it under the laws of the United States, to encourage settlers on unoccupied lands.

Ques. No. 9. Under what act of Congress or law of the United States do you hold it?

Ans. I am not familiar with the dates of the acts I refer to. I am not positive as to its name.

Ques. No. 10. Do you hold it under any act of Congress or law of the United States; if so, under what law?

Ans. I do hold it by virtue of acts that have been passed to encourage settlers on unoccupied lands, but the title of those acts I am not familiar with.

Ques. No. 11. Don't you know that you hold that land adversely to Capt. Sutter and those claiming under him?

Ans. I know they claim those lands.

Ques. No. 12. Don't you know that they claim those as being lands granted to Capt. Sutter by the Mexican government?

Ans. They are lands that have been so represented to me, as lands that were granted to Capt. Sutter by the Mexican government.

Ques. No. 13. Have you titles to these lands from Capt. Sutter, or do you claim them by title from Capt. Sutter or his grantees?

Ans. I do not hold them from either Capt. Sutter or his grantees.

Ques. No. 14. Are not Warren, Cabels, Foster and Brockway, settlers on the land claimed by Sutter, holding adversely to him?

Ans. Three of those, namely, Warren, Cabels and Brockway, are settled on lands what are sometimes represented as within the Sutter claim; Foster is not.

Ques. No. 15. Did not Foster formerly reside on the lands within the Sutter claim; if so, was he not ejected from the same in a suit of Sanders against Fox, Foster and Mack?

Ans. Foster has shown me about five acres of the Tule, in the back part of his claim, which was in dispute in that action.

Ques. No. 16. Does not Foster now claim a tract of land within those limits, or has he not heretofore?

Ans. He does not now; he has heretofore.

Ques. No. 17. Do you belong to any body of men or association, formed for the purpose of raising money for the purpose of employing counsel and *proceeding* testimony, to be used in this case before the United States land commissioners, the district or other court or tribunal, or other officer, for the purpose of delaying or defeating the claim of the appellee, or have you at any time heretofore?

Ans. I have never joined any league or secret association for any such purpose; I don't know as I ever appropriated any money for that purpose; I have never belonged to any such body for that purpose.

Ques. No. 18. Have you ever paid or promised to pay, or become liable to pay, any money or sums of money whatever, to be employed or used in the employment of counsel, or in procuring testimony to be used before the board of United States land commissioners, the district or other court, tribunal, or officer, to procure the defeat of Sutter's grant?

Ans. I have pledged $500, or to assist the government in the employment of counsel in this case.

Counsel for appellee here objects to the foregoing deposition, on the grounds of irrelevancy and the incompetency of the witness, and of the testimony and of the witness's interest in this case, and on all other

legal grounds, except those mentioned in the agreement hereto annexed.

C. W. HOIT.

Sworn to and subscribed before me, on this 29th day of March, 1856.

SAMUEL CROSS,
Notary Public Sac. Co., Cal.

Deposition of John F. Madden.

John F. Madden, a witness produced on the part of the appellants, being duly sworn, on oath deposes and says:

Quest. No. 1. What is your name, age, residence, and occupation?

Ans. My name is John F. Madden; age 29 years; residence Sacramento city; occupation mining, holding office, and receiving rents from lands; my trade is saddle and harness maker.

Quest. No. 2. Were you ever present at an examination of John A. Sutter, junior, as a witness in an action tried before C. C. Sackett, a justice of the peace in and for the city of Sacramento, and State of California, wherein Julius Wetzlur et al. were plaintiffs, and M. A. Milligan et al. were defendants?

Ans. I was present a portion of the time.

Ques. No. 3. Did you hear, on such an examination, John A. Sutter, junior, testify by what title plaintiffs hold the land in controversy; if yea, what was that title?

Ans. I was in the court when young Sutter was giving his testimony in relation to lands claimed by him in this State. He said that at that time he had no interest in any lands in the State of California, by virtue of any grant; that he claimed one hundred and sixty acres of land as a settler, by possession, and that possession consisted in using that place as an embarcadero. That was the land in controversy, and is situated in Sacramento city, near the junction of I street and the Sacramento river. This was in June of 1850.

Cross-examination.

Ques. No. 1. From your knowledge, and from general report, had not John A. Sutter, jr., sold out his interest in this grant to his father, or transferred it?

Ans. The general report was, that young Sutter had reconveyed to his father all the interests which the old man had before conveyed to the young man.

Ques. No. 2. Did John A. Sutter, jr., say, on that examination, that he had sold out his interest in this grant, or these grants, to his father?

Ans. I did not hear him say so; the question was not asked him while I was present. I did not hear him asked if he ever had a grant.

Counsel here objects to the foregoing deposition on the grounds of irrelevancy, and all other legal grounds not mentioned in the agreement hereto annexed.

JOHN F. MADDEN.

Sworn to and subscribed before me on this 29th day of March, 1856.

SAMUEL CROSS,
Notary Public Sac. Co., Cal.

And the examination of witnesses is here closed on the 29th day of March, 1856.

STATE OF CALIFORNIA,
County of Sacramento.

I, Samuel Cross, a notary public in and for the county of Sacramento, having my office and residence in the city of Sacramento, county and State aforesaid, do hereby certify, that in pursuance of the agreement of parties, by their attorneys, which agreement is hereunto annexed, on the 25th day of March, 1856, at my office aforesaid, personally appeared John Bidwell, Henry A. Caulfield, James McClatchey, and James M. Sanford, and on the 26th day of the same month and year personally appeared Richard D. Ferguson, and on the 27th day of the same month and year George R. Nesbitt, and on the 28th Thomas J. Hall and George W. Foster, and on the 29th Samuel Norris, Chas. W. Hoyt and Jno. F. Madden, witnesses produced on the part of the United States, appellants, and the said witnesses being by me first duly sworn that they would testify the truth, the whole truth, and nothing but the truth, in an action pending in the United States district court in and for the northern district of California, wherein the United States are appellants and John A. Sutter is appellee, the said witnesses did testify, and their testimony was by me reduced to writing, as the same appears on the several pages of paper hereto attached, and numbering from "1" to "96" inclusive, and the evidence so taken was then by me carefully read to each of the said witnesses, and by *the* them subscribed in my presence.

In testimony whereof, witness my hand and official seal, [SEAL.] hereunto affixed at my office aforesaid, on this 29th day of March, 1856.

SAMUEL CROSS,
Notary Public Sac. Co., Cal.

Endorsed: Filed March 31, 1856.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS,
Deputy Clerk.

Deposition of Jesse Merrill.

UNITED STATES DISTRICT COURT,
Northern district of California.

SAN FRANCISCO, *April 15th*, 1856.

On this day before me, Geo. Pen Johnston, a commissioner of the United States for the districts of California, duly authorized to administer oaths, &c., &c., came Jesse Merrill, a witness produced on behalf of the United States in case No. 319, being an appeal from the board

of commissioners to ascertain and settle the private land claims in the State of California, in case No. 92 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present, the acting U. S. district attorney on behalf of the United States, and Volney E. Howard, esq., on behalf of the claimant.

Questions by the Acting U. S. District Attorney.

Ques. 1. What is your name, age, and place of residence?

Ans. 1. My name is Jesse Morrill; I am fifty-five years of age; and I reside at Sacramento city.

Ques. 2. Are you acquainted with John A. Sutter, the claimant in this case; if yea, how long and where have known him?

Ans. 2. I am acquainted with John A. Sutter, the claimant in this case; I have known him ever since the last of October or the first of November, 1849; I was first introduced to him when on the steamer McKim on the way from San Francisco to Sacramento city; I have known him in and about Sacramento city ever since.

Ques. 3. Did you have a conversation with him, when you first became acquainted with him, about his claim to land in California; if yea, when did that conversation take place, and where, and what was the substance of it?

Ans. 3. I did have such a conversation with him at the time I was introduced to him on board the steamer McKim in October or November, 1849; when we reached Sutterville there were three or four vessels lying there, and I asked Capt. Sutter what place that was; he said it was Sutterville, and I fell into further conversation with him; I told him I had come out to make California my future home; I told him I had been travelling pretty much all over the world, and that I was tired of such a life and wanted to get a piece of land and settle down; he told me I could take some land anywhere about there in that vicinity; we then got up towards where we saw some vessels lying at Sacramento city; Capt. Sutter told me it was that city; I then asked him if he did not own all the land about there, and asked him about his grant; he told me that he had the land in possession, but he had no grant for any land below Feather river. I then landed and left the captain, and never had any conversation with him about lands until some time in the spring of 1850. I was then talking to him again about the land about Sacramento; he said it was so mixed up that he did not know what to make of it, but that I should have some land any way—I should have a block in the city; that he believed they were trying to fool him out of it, and he didn't know what to say about it; he said his residence was at "Hock Farm," but that he staid mostly about Sacramento city. The next time I saw him was about August, 1850. I told him I was going home for my family and wanted him to give me the land he had promised me; he said I should have it, and that was the last of it.

Ques. 4. Are you acquainted with John S. Fowler; if yea, do you know whether or not he is interested in the event of this suit; if he is

so interested, how do you know it, and what is the extent of his interest?

Ans. 4. I know John S. Fowler; I was one of a committee of a benevolent association (I mean the Masonic order) that waited upon Mr. Fowler in the fall of 1853, *Mr. Fowler in the fall of* 1853; Mr. Fowler owed a man by the name of Deering, whom the Masonic order had been supporting some time, the sum of fifteen hundred dollars, and we waited upon him to get him to pay Deering some portion of the debt, so as to relieve the Masonic order of the burden of his support. Mr. Fowler said that he had no money, but that he owned three thousand acres of land under the Sutter title, and that if the title was confirmed, it would be very valuable; he offered to give Deering a deed for six hundred acres of land lying on the American river, but he made no such deed, and money has never been paid.

Cross-examination.—Questions by the Att'y for the Claimant.

Ques. 5. Have you ever been a member of the settlers' association or league of Sacramento county, and do you hold any land adversely to the Sutter title?

Ans. 5. I have never been a member of the settlers' association or league. I live in Sacramento city, on a piece of land which I hold under a tax-title, and for which I have no Sutter title, and for which I am now sued by a grantee of the Sutter title; since the commencement of the suit, within the last two weeks, I have agreed to purchase the Sutter title.

JESSE MORRILL.

Sworn to and subscribed before me this 15th day of April, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Endorsed: Filed April 15th, 1856.
JOHN A. MONROE, *Clerk.*
Pr. W. H. CHEVERS, *Deputy Cl'k.*

Deposition of Jas. C. Zabriskie.

UNITED STATES DISTRICT COURT,
Northern district of California.

SAN FRANCISCO, *April 14th,* 1856.

On this day before me, Geo. Pen Johnston, a commissioner of the United States for the districts of California, duly authorized to administer oaths, &c. &c., came James C. Zabriskie, a witness produced on behalf of the claimant, in case No. 319, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 92 on the docket of the said board of commissioners, and was duly sworn and testified as follows.

Present, the acting U. S. district att'y on behalf of the United States, and Volney E. Howard on behalf of the claimant.

1st Questions by Att'y for the Claimant.

Ques. What is your name, age, and place of residence?

Ans. 1. My name is James C. Zabriskie; my age is fifty-two years, and I reside at Sacramento city, Cal'a.

Ques. 2. How long have you resided in California, and how long and where have you known John A. Sutter?

Ans. 2. I arrived in California in July, 1849; I became acquainted with John A. Sutter in August of the same year at Sacramento city, and have known him ever since.

Ques. 3. Did you ever act for John A. Sutter as an attorney at law? If yea, state at what time, and in relation to what subject.

Ans 4. I did act for John A. Sutter as attorney at law from July, 1850, to July, 1851, during which time I transacted nearly all his legal business.

Ques. 4. In your capacity as attorney, did you ever have possession of any grants of land to Sutter, or become acquainted with any such grants; if yea, state by whom they were granted and signed, in what language they were written, their dates, contents, and character, so far as you can recollect?

Ans. 4. I never had possession of any such grants, but became acquainted with such; there were two of them in the possession of John S. Fowler, who was attorney in fact of John A. Sutter, and occupied a portion of my office. One of these grants purported to be made by Alvarado to Capt Sutter, for eleven leagues of land, and was dated, I think, in July or June, 1841; the other purported to be from Micheltorena, for twenty two leagues of land, and was dated on or about November, 1844, and they were both written in the Spanish language.

Ques 5. To whom was the Sobrante grant made?

Ans. 5. My impression is that the Sobrante grant was made to John A. Sutter and son.

Ques. 6. Look at the translation of the grant now shown you and state whether it corresponds with your recollection of the original grant.

Translation of Grant C.—Exhibit A.

Translation.

Manuel Michela., Brigadier General of the Mexican Army, Adjutant General of the Staff, Governor General in Chief, and Inspector General of the Department of the Californias.

Whereas Don Juan Augusto Sutter, a Mexican naturalized citizen, and his son, John A. Sutter, have solicited, for the personal benefit of themselves and family, the surplus of land within his rancho, named New Helvetia, as laid down in the map which accompanies the grant, and complied with the usual investigation and inquiry in relation thereto, required by law and regulations, by virtue of the authority conferred upon me, in the name of the Mexican nation, and for the good conduct and services which the Señor Sutter has rendered, and is rendering at the present time, I have conceded to them the mentioned

lands, declaring in them the ownership thereof by these presents, subject to the approbation of the most ex'o the Assemblea Departmental, under the following conditions:

1st. They may enclose it without interfering with the paths, roads, and servitudes. They shall enjoy it exclusively and freely, appropriating it to the uses or cultivation which suits their convenience.

2d. They can request the proper juez that he give them lawful possession by virtue of this decree, so that the boundaries may be defined, at the limits of which there may be placed, beside the landmarks, some fruit trees, or useful kind of forest trees.

3d. The land of which mention is made consists of twenty-two square leagues, described upon the map which accompanies the grant.

4th. The juez who gives the possession shall have the land surveyed according to law, remaining the surplus that may result at the disposal of the nation for its convenient uses.

5th. Therefore I command that these presents, investing the title in them, and holding the same as firm and valid, shall be handed in for record in the proper book, and shall be delivered to the parties in interest for their security, and other purposes.

Executed on this ordinary paper, having no stamped paper appropriate.

Santa Barbara, this fifth February, eighteen hundred and forty-five.

(Signed) MANUEL MICHELT'A.

JUAN CASTANEDO,
Sec'y ad interim.

I certify the foregoing to be a true and correct translation from the foregoing Spanish document filed in this office, in case No. 92, John A. Sutter.

(Signed) GEO. FISHER, *Sec'y.*

I, George Fisher, sec'y of the United States land commission to ascertain and settle the private land claims in the State of California, do hereby certify that the foregoing is a true and correct copy of a document in case No. 92, wherein John A. Sutter claims a tract of land called New Helvetia, now on file in this office.

In testimony whereof, I have hereunto subscribed my name, office of the above named commission, San Francisco, Cal'a, this twenty-fourth day of March, 1854.

(Signed) GEO. FISHER.

Filed in office March 8th, 1852.

GEO. FISHER, *Sec'y.*

[The att'y for the claimant here offers a document in evidence, purporting to be a translation of the original "Sobrante" grant, and asks that it be attached to and made a portion of this deposition; it is accordingly so attached, marked in red ink Exhibit A.—G. G. J.]

[The acting att'y for the U. S. objects to the introduction of said

document in evidence, and to the interrogatory based thereon, on the grounds that the interrogatory is leading, and that the document is irrelevant and incompetent testimony, and that the document is not an examined one.]

Ans. 6. It corresponds to the original as to the general character of its contents, but I cannot be certain as to the correspondence of the language.

Ques. 7. How did you become acquainted with the contents of the original grants to Sutter of which you have spoken?

Ans. 7. Eugene F Gillespie and Henry E. Robinson had become the purchasers of the interest of John A. Sutter in those grants (others were interested in the purchase with Gillespie and Robinson) in May, 1850, I think; Fowler was the agent of the grantees, and held possession of the grants in my office. I was the attorney of Robinson and Gillespie, and in that capacity was required to prepare important papers connected with this land. Gillespie and Robinson were good Spanish scholars; could read and translate the Spanish language with facility. Whenever I had occasion (which was quite frequent) to examine those grants, I did it by their aid, and thus became acquainted with the character of those documents.

Ques. 8. State anything else you recollect with regard to the character of these grants.

Ans. 8. The grants appeared to bear every evidence, in their form and character, of legal or proper authentication in reference to the boundaries defined in the grants. I will give my description of them according to the best of my recollection, as follows: Commencing at the Buttes on the north, extending south to about five miles below the American river, east to Leidesdorff line and Feather river, and west of the Sacramento river.

Ques. 9. Do you remember any other document or paper accompanying the grants? If yea, state what it was.

Ans. 9. I do remember a map accompanied the grants, defining their boundaries.

Ques. 10. Do you know what became of those grants and said map?

Ans. 10. I do; they were burned up with my office, in August, 1851.

Ques. 11. When did you first have any knowledge or hear of the Alvarado and Micheltorena's grants?

Ans. 11. I think both of these grants were referred to, in conversation and in public discussions, as early as October or November, 1849; I am quite sure that the second grant was publicly referred to at a public meeting held in Sacramento city in December of that year. I knew the fact of the existence of these grants in June or July, 1850, when I found them in the possession of Fowler, as before stated.

Ques. 12. How much land did Sutter claim and occupy south of the American river?

Ans. 12. I never heard Sutter state the precise quantity of land he claimed south of that river; my impression, derived from conversations with those interested in those grants, as well as from the language of

the grants and the map accompanying the same, is, that it extended south about five miles below the American river and east to Leidesdorff line. Sutter had improved a large quantity of land in the vicinity of Sacramento city, by enclosure and cultivation.

Ques. 13. Was any portion of the tract of land on which the city of Sacramento is situated so overflowed, previous to the erection of the levees, as to be unfit for cultivation during some portion of each year?

Ans. 13. Yes; there were some sloughs and Tule lands in the immediate vicinity of those sloughs which could not be and cannot be cultivated during any portion of the year without reclamation; but a very large proportion of the land can (embraced within the city limits) be cultivated—I should think about nineteen-twentieths.

Cross-examination.—Questions by the Acting Attorney for the United States.

Ques. 14. Are you interested directly or indirectly in this suit, and would the confirmation of the claim of Sutter inure to your benefit; if yea, how much land do you claim under Sutter, where does it lie, and what is its value?

Ans. 14. I own some outside lots of land of small value—the title to which, in any event, is uncertain—which, if the existing grants are confirmed, might inure to my benefit. The largest and most valuable portion of my property is in my possession, and would not be affected by the decision, although I derive the title to it through Sutter. I presume the property in my possession would bring at sale at this time twenty or twenty-five thousand dollars; the outside property, which is held adversely to me, and which I would obtain by a confirmation of the Sutter title, is worth about five thousand dollars.

Ques. 15. Are you acquainted with the Spanish language, or with the general appearance of grants to lands issued by the Mexican government; if yea, where and how did you become so acquainted?

Ans. 15. I am sufficiently acquainted with the Spanish language, when either written or spoken, to distinguish it from any other language; but I have no knowledge of the form or particular mode of authentication of Spanish or Mexican grants.

Ques. 16. How do you know that either or both of the grants mentioned by you were signed by a governor or governors of California?

Ans. 16. I knew historically that both Alvarado and Micheltorena had occupied the position, at different times, of governor of the Territory of California. I saw their names attached to those grants, which contained other evidences of authentication, and consequently I believed them genuine; there were seals attached, and the general form of the grants were the other evidences of authentication to which I refer. I think one of the grants was written on parchment; about the other I do not remember.

Ques. 17. Is your recollection of the character and matter of those grants clear, or indistinct?

Ans. 17. I recollect distinctly that I frequently saw those grants; that

they were signed by Alvarado and Micheltorena, and attested by Jimeno, the secretary, and I think Castenado,, and that they purported to convey to Sutter the land described by me in a previous part of this deposition; but the particular language used in either of the grants I cannot state, without referring to the printed or written translation. When I say the grants were signed by Alvarado and Micheltorena, and the attestations signed by Jimeno and Castenado, I mean that they purported to be so signed.

Ques. 18. Was the description of the land alike in each grant; if not, wherein did the descriptions differ?

Ans. 18. I think the first grant conveyed eleven leagues within the boundaries described by me, and the second twenty-two leagues of the surplus within the same boundaries.

Ques. 19. Which of those grants was bounded by the Leidesdorff grant, and how do you know it was so bounded?

Ans. 19. I think neither of the grants referred to Leidesdorff's line, but Leidesdorff's grant referred to Sutter's line, and thus I learned that Sutter's eastern line south of the American river was connected with that line.

Ques. 20. By what words of description did you ascertain that Sutter's southern boundary was five miles south of the American river?

Ans. 20. By no words in the grants, but by the lines on the map, which were generally understood to extend about that distance south.

Ques. 21. Look at the map marked A. P. L., exhibit to the deposition of J. J. Vioget, March 8, 1855, facing page 106 in the transcript in this case, from the land commission, and state whether that map is a correct copy of the map referred to by you?

Ans. 21. It is about five years since I saw the map heretofore referred to, in the possession of Fowler; I do not remember ever since until now to have examined a copy of a map of that survey; I cannot, therefore, have any distinct recollection of particular lines—the general facts only are impressed upon my memory; I think, however, that the map now referred to is quite similar to the one I saw in the possession of Fowler.

Ques. 22. Point out in the said map attached to the deposition of Vioget, the southern boundary of Sutter's grant, and state how you know it to be such southern boundary?

Ans. 22. The map I saw in the possession of Fowler represented three lagunas as the southern boundary; the map now referred to has the same designation as the southern boundary; there are three lagunas located about five miles below the American river, which have frequently been pointed out to me as those referred to in the map I saw in possession of Fowler; the dotted lines, which purport to be the southern boundary on both maps, extend to those lagunas.

Ques. 23. Did not those grants call for the Feather river for the eastern boundary; and if yea, how could the land granted lie south of Feather river, and what would be the eastern boundary of the land south of Feather river and north of the American?

Ans. 23. They did, but likewise referred to a map accompanying the petition and grant, which map, as I have stated, determined the boundaries. I cannot now state what determined the eastern line between the American and Feather rivers.

Ques. 24. How are you able to state that the translation of the original grant shown you (Exhibit A, G. P. J., annexed to this deposition) is correct, and do you not observe that the date in it does not correspond with your recollection of the date in the original grant?

Ans. 24. My recollection is, that the paper shown me, in its general description and character, is like that read and translated by Gillespie and Robinson; my recollection of the date is quite as correct as I expected it to be, considering the period of time that has elapsed since I was familiar with those grants.

Ques. 25. Have you been engaged in raising crops since you came to California; and is not the whole of Sacramento city, unless protected by levees, liable to inundation from the swelling, impulses and currents of the rivers near it?

Ans. 25. I have raised one crop only; nearly the whole city has been overflown several times since I have resided there, but the water has passed off in time to enable those who desired to raise crops during the year to do so.

Direct examination resumed.—Questions by the Attorney for the Claimant.

Ques. 26. Do you mean to be positive in your recollection that the Micheltorena grant was dated on or about November, 1844?

[Objected to by the act'g att'y for the U. S., as being leading, and as a cross-examination intended to vary the previous statement of the witness.]

Ans. 26. I do not; I was answering from memory, which is vague as to dates and particulars.

Ques. 27. Is there any circumstance which may have induced you to suppose that the date of that grant was November, 1844, instead of February, 1845?

[Objected to by the acting att'y for the U. S., for the reasons assigned in the objection to the last foregoing interrogatory.]

Ans. 27. I was familiar with the terms of a deed from J. A. Sutter to J. A. Sutter, jr., which appears in the transcript in this case, copied on page 135, and which refers to the two grants, stating one of them to be dated on or about November, 1844, and I think my memory was influenced by that fact in determining the date of that grant. I supposed my memory was correct when I stated the grant was dated on or about November, 1844; and relying now upon my memory alone, without the aid of other facts within my reach, I would still say the grant was dated in November, 1844. I was familiar with the deed from J. A. Sutter to J. A. Sutter, jr., as early as 1850, while I was acting as attorney for Sutter; I never noticed any variance between the dates recited in the deed and the date of the Micheltorena

grant, but I never had occasion to examine that deed with a view to determine that fact.

JAMES C. ZABRISKIE.

Sworn to and subscribed before me, this 14th day of April, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

The attorney for the government objects to the foregoing deposition being read and considered as evidence:

1st. Because the witness is interested in the result of this suit.
2d. Because the witness nothing of the genuineness of the grant.
3d. Because the evidence is irrelevant, and otherwise incompetent.
4th. Because it contains an attempt to vary the instrument of title.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Dated San Francisco, April 14th, 1856.

Endorsed: Filed April 15th, 1856.
JOHN A. MONROE, *Clerk*,
Pr. W. H. CHEVERS, *Deputy Clerk.*

Stipulation of Counsel.

United States District Court for the northern district of California.

THE UNITED STATES, Appellants,
vs.
JOHN A. SUTTER, Appellee.

In this case, the same being an appeal from the decision of the United States board of land commission for the adjustment of land titles for the State of California, organized under the act of Congress *for* the 3d of March, 1851, it is agreed by counsel, that the archives in the surveyor general's office for the State of California have been examined, and that no grant or copy of grant dated February 5th, 1845, can be found among said archives.

J. H. McKUNE,
For the Plaintiff, Appellant.
V. E. HOWARD,
For Appellee.

July 14th, 1856.

Endorsed: Filed July 15th, 1856.
JOHN A. MONROE, *Clerk.*
W. H. CHEVERS, *Deputy Clerk.*

Copy of Expediente relative to "Nemshas."

Sello Cuarto—Dos Reales.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y cuarto, y mil ochocientos cuarenta y cinco.

PABLO DE LA GUERRA.

MICHELTORENA.

[Ad'a Mat'a de Mo., Seal.]

Ex'mo Señor Gobernador:

Teodoso Sicard, nativo de Francia y Mejicano de naturalizacion, ante V. E. con el mas profundo respeto se presenta y espone que habiendo adquirido algunos bienes del campo, y descando dedicarse á la agricultura, he registrado un terreno baldio situado en los margenes del arroyo de los Osos o Tancas, y conocido con el nombre de Nemshas cuyos linderos son al N. el arroyo de los Osos; al E. la Sierra Nevada, al S. tierra baldias, y al Pon'te terreno del Señor Sutter, y consta de cuatro sitios de ganado mayor como manifiesta el diseño qe. nebidamente acompaña.

P. T. A. V. E. ruego.

MONTEREY, *Julio* 25, *de* 1844.

Inf. Oct. 1, ex'ro del despacho tomando ante otros u to exel. necesario.

MICHELT'A.

Ex'mo:

Se digne concederle d'ho terreno en lo qe. recibira merced.

NUEVA HELVECIA, *Julio* 6, *de* 1844.

Quedo de V. E. el mas atento serv'or.

Pr. THEODORO SICARD.

S'or Gobernador:

A muchas solicitudes de la naturaliza como la precedente, se les ha puesto la providencia de espuarse hasta que V. E. pueda hacer la vicita por los rios del Sacram'to y San Joaquim, y como tambien, no hay un diseño general de aquellos terrenos, no se podran hacer tal vez con haciesto, las conseciones que se pretenden por lo que se a V. E. lo tuviese habien podra quedar prena'te este esped'te hasta que no se despachen las solicitudes a que me refierro.

Monterey, Julio 26, de 1844.

MAN'L JIMENO.

MONTEREY, *Julio* 26, *de* 1844.

Ocupedo provisionalmente hasta mi subida despachan.

MICHELT'A

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N. 134 – Page 209.

S'or Juez y Encargado de la Jurisdiccion del Sacram'to:

Pedro Teodora Sicard, Mejicano pr. naturalizacion, a V. suplico se sirva informar si el terreno qe. manifiesta el adjunto diseño es baldio, contodo el demas qe. V. crea necesario. Que teniendo qe. pasar á la capital a llevar mi particion a manos del E. S. gobernador pa. impetrar de S. E. d'ho terreno, y siendo preceso el informe de V. como juez de la jurisdiccion a qe. pretenece, pa. obvear la demora qe. sufieria mis instancias en el transito de informe si tuviese qe. venir desde Monterey, hasta aqui pa. el y regresar a aquella capital pa. el decreto definitivo de S. E. A. V.

El terreno que se solicita en este pedimento es baldio y no pertenece a persona, pueblo ni corporacion, y pa. los fines que convengan doy este informe Nueva Helvecia, á 1 de Julio, 1844.

J. A. SUTTER.

Suplico se sirva informar al margen de esta solicitud lo qe. crea de justicia, despensando el srso. de papel comun pr. falta del sellado.

NUEVA HELVECIA, á 1 *de Julio, de* 1844.

Quedo de V. el mas atento servidor.

Pr. THEODORE SICARD.

[*For map see original, page* 282.]

Manuel Micheltorena, Grl. de Brigada del Ejercito Mejicano Ayudante Gral. de la Plana Mayor del mismo, Gobernador, Comandante Gral. é Inspector del Departam'to de Californias.

No pudiendo ahora por estar sumamente ocupado este gobierno supremo departamental estender uno por uno los titulos respectivos a todos los ciudadanos qe. han solicitado terrenos con informes a su favor del S'or D. Augusto Sutter, capitan y juez encargado de la jurisdiccion de Nueva Helvecia y Sacramento, a nombre de la nacion Mejicana, les confiero, por estas letras, la propiedad de ellos y sus familias de los respectivos terrenos marcados en sus instancias y diseños, á todos y a cada uno, de los qe. hayan solicitado y obtenido informe favorable del espusado S'or Sutter, hasta, hoy dia de la f'ha sin qe. ucedie puede disputarles su propiedad, sirviendoles una copia de este que les dara mas adelante el S'or Sutter, de titulo formal, con el qe. se presentaran a este gobierno para estenderles el mismo titulo en la debida forma y papel sellado correspondiente, y para la debida constancia, en todos tiempos, doy este documento qe. sera reconocido y acatado por todos las autoridades civiles y militares de la nacion Mejicana, en este y en

los demas departamentos, autorizado debidamente con los sellos militar y de gobierno, en Monterey, a veinto y dos de Diciembre, de mil ochocientos y cuarenta y cuatro.

(Sig.) MAN'L MICHELTORENA.

Certifico que es copia, Nueva Helvecia, Mayo 20, de 1846.

J. A. SUTTER.

Endorsed:

No. 196, Claude Chana.—Rancho de Nemshas, B Espediente.—Filed in office April 21st, 1852.

GEO. FISHER, *Sec'y.*

Recorded in record of evidence, vol. 1, pages 129 and 130.

GEO. FISHER, *Sec'y.* R. ROSE, *Att'y.*

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such having in my charge and custody the records of the board of U. S. commissioners to ascertain and settle the private land claims in California, do hereby certify that the seven preceding pages exhibit a true copy of a document filed in case No. 196 on the docket of said board.

[SEAL.] Given under my hand and official seal, at the city of San Francisco, Cal., this twenty-sixth day of April, 1856.

JOHN C. HAYS,
U. S. Sur. Gen'l U. S.

Endorsed: Filed July 15, 1856.

JOHN A. MONROE, *Clerk.*
Pr. W. H. CHEVERS, *Deputy.*

Copy of Grant, Certificates, Map, &c., in relation to "Jimeno Rancho."

Sello Primero—Ocho Pesos.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

PABLO DE LA GUERRA.

MICHELTORENA.
[SEAL.]

El C. Manuel Micheltorena, General de Brigada del ejercito Mejicano, Ayudante General de la plana mayor del mismo, Gobernador Comandante General é Inspector del Departamento de Californias.

Micheltorena to Jimeno—Grant.

[SEAL.]

Por cuanto D. Manuel Jimeno ha pretendido para su beneficio personal el sitio que se halla des ocupado entre el rancho que se le ha

concedido a los hijos D. Tomas O. Larkin el rio del Sacramento y las tierras valdeas que estan por la parte del sur todo conforme se demuestra en el diseño respectivo, practicadas previamente las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos de la materia usando de las facultades que me son conferidas a nombre de la nacion Mejicana he venido en concederle el terreno mencionado sugetandose a las condiciones siguientes:

1a. Podra sercarlo sin prejudicar las travesias caminos y servidumbres lo disfrutara libre y esclusivamente destinandolo al uso o cultivo que mas le acomode.

2a. Solicitara del jues respectivo que le de la posesion juridica en vertud de este despacho por el cual se demarcaran los linderos en cuyas limites pondra amas de sus mohoneras alguno arboles frutales o silvestres de alguna utilidad.

3a. Si contraviniere a estas condiciones perdera su derecho al terreno. En consecuencia mando que teniendose por firme y valedero al presente titulo se tome razon de el en el libro respectivo y se entreque al interesado para su resguardo y demas fines. Dado en Monterey a cuatro de Noviembre de mil ochociento cuarenta y cuatro.

MANUEL MICHEL'A.

FRAN'CO ARCE.

Queda tomada razon de este despacho en el libro respectivo a fojas.

FRAN'CO ARCE.

Received for record at 10 o'clock on the 27th Sept., A. D. 1851; recorded Sept. 27, A. D. 1851, fol. 56 and 57, Book A.

U. P. MONROE,
By JOHN T. HAYNES.
Dept. Clerk Colusi Co., California,
J. T. HUGHES.

Endorsed.

No. 131.—Thomas O. Larkin et al.—Jimeno rancho.

H.

Original grant to Jimeno.
Filed in office Jan'y 5th, 1853.

GEO. FISHER, *Sec'y.*

Annexed to the deposition of Wm. D. M. Howard, of January 6th, 1852.

GEO. FISHER, *Sec'y.*

Recorded in record of evidence, vol. 6, pages 726, and 727.

El que suscribe certifica en todo fée de verdad; que en el año de mil ochocientos cuarenta y cuatro siendo escribiente de la secretaria de gobierno de la Alta California, escribio un titulo en papel sellado que firmo el Señor General Dn. Manuel Micheltorena como gobernador de este pais en donde declaraba dueno en propiedad à Don Manuel Jimeno de un terreno en las margenes del Rio del Sacramento conforme

al diceño respectivo en el cual se demar caba una estencion de once leguas colindante en primer lugar lugas con el terreno que se les consedio a los hijos de Don Thomas O. Larkin. Y para la devida constancia se estiende la presente en Monterey a seis de Junio de mil ochocientos cuarenta y siete. PEDRO ESTRADA.

El diceño a que me refiero es, segun me acuerda como se demuestra a la vuelta, y pa. constancia lo firmo en el mismo mes y año.

PEDRO ESTRADA.

El que suscribe certifica en todo forma de verdad; que en el año de mil ochocientos cuarenta y cuatro, estando encargado de la Tresoxexea de esta Alta California, le consta haber vista un titulo en papel sellado firmado por el Señor General Don Manuel Micheltorena como gobernador de este pais, en donde declaraba dueno en propiedad a Don Manuel Jimeno de un terreno en las margenes del Rio del Sacramento conforme al diseño respectivo en el cual se demarcaba una escala de once leguas pronievido por primer lindero el rancho que se les consedio a los hijos de Don Tomas O. Larkin. Y para la devida constancia se estiende la presente en Monterey a seis de Junio de mil ochocientos cuarenta y siete. JOSE ABREGO.

Endorsed:

Pedro Estrada and José Abrego.—Certificate respecting the Jimeno ranch.

Recorded in the book B of records, of the manuscript 7 of Monterey, pages 49 and 50, March 2d, 1850.

WM. S. JOHNSON, *Acting Record'g Clerk.*

Recorded in the book of records of the municipality of Monterey, pages 133 and 134, Jan'y 18, 1850.

WM. S. JOHNSON, *Act'g Record'g Clerk.*

In new book of records, pages 49 and 50, Nos. 67 and 68.

HUGO REID.

No. 131.—Thomas O. Larkin et al.—Jimeno rancho.

F.

Certificate.

Filed in office Jan'y 5th, 1853.

GEO. FISHER, *Sec'y.*

Recorded in record of evidence, vol. 6, page 263.

GEO. FISHER, *Sec'y.*

Ex'ma Junta Departamental.

Manuel Jimeno ante V. E. con todo el respeto divido hugo presente. Que por el titulo adfunto se acredita habrese consedido a un favor un terreno en las margenes del Rio del Sacramento, y como a V. E. corresponde da su aprobacion, suplico se digne otorgarmela de lo que resibire gracia y merced tuveo lo necasario, &c. Sirviendo dispensarme el papel comun por no haber del correspondiente.

MAN'L JIMENO.

Monterey, Abril 21, de 1846.



ANGELES, *Junio* 3, *de* 1846.

Dado cuenta en sesion de hoy a la E. A. departamental con esta instancia, se mando persa en union del espediente respectivo a la concesion de terrenos baldios.

AGUSTIN CHEVA.

[*For map see original, page* 286.]

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such having in my charge and custody a portion of the archives of the former Spanish and Mexican territory of Upper California, and also the records and papers of the late board of land commissioners to ascertain and settle private land claims in California, by virtue of the power invested in me by law, do hereby certify that the preceding and hereunto annexed pages of tracing paper exhibit true copies of the following described documents, towit: pages numbered one, and two, and three exhibit a copy of the grant to Man'l Jimeno, with the endorsements therein, filed in case No. 131 of said land commission, in which T. O. Larkin et al. are claimants against the United States, for a place called "Rancho Jimeno;" pages four, five, and six exhibit copies of certificates signed by Pedro Estrada and José Abrago, with the endorsements thereon, on file in the above case; pages seven and eight exhibit a true extract and copy of map from expediente No. 413, in Spanish archives, a copy of which expediente is also on file in said case No. 131.

Given under my hand and seal of office at the city of San Francisco, Cal., this 26th day of April, A. D. 1856.

[SEAL.]

JOHN C. HAYS,
U. S. Sur. Gen'l Cal.

Endorsed: Filed July 15, 1856.

JOHN A. MONROE, *Clerk.*
Pr. W. H. CHEVERS, *Deputy.*

Letter relative to Petition for Land on the San Ignacio River, &c.—Translation.

DECEMBER 28*th.*

To Don Augusto Sutter, Commissioner of Justice of of the Frontier the Sacramento:

In attention to the matters set forth in your note of the 18th instant, petitioning in the name of your eldest son, Don Juan Augusto, for a

tract of land near the river of San Ignacio, it should held under advisement until the supreme government grants its consent, and to which information has been given of the disposition which the Russians had taken for the abandonment of the establishment of Ross. But it is necessary that you present your petition to the said superiority, accompanied with the proper map for the due decision thereof, the said land, till now, having belonged to the nation for the proper uses thereof. You can direct your petition to this government to make the necessary report thereon, in order that it may be acted upon by the supreme government. God, &c.

A. Don Augusto Suter, Encargado de Justicia de la Frontera del rio del Sacramento:

D'BRE 28.

Alentiendo a las razones que V. manifiesta en su nota de f'ha 18 de corriente pretentiendo en nombre de su hijo mayor Dn. Juan Augusto el terreno inmediato al rio de S. Ignacio, devera tomar en consideracion hasta que no se dé el concentimiente del supremo gobierno aquien se le dio cuenta con la disposicion qe. habian tomado los rusos de abandonar el establecm'to de Ross; pero es precizo qe. V. haga su instancia a la misma superioridad acompanando el diseño correspondiante para en divida determinacion per haber quedado hasta ahora el terreno mensionado a beneficio de la nacion pa. los usos convenientes; la instancia qe. V. haja puede dirigirla pr. conducto de este gobierno para poner el informe que sea justo para que en su consecuencia pueda recar la suprema determinacion. Dios, &c.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, by virtue of the power vested in me by law, do hereby certify that the preceding and hereunto annexed page of tracing exhibits true and accurate extract from an unbound book in said archives, entitled "Libro Borcador de la Correspondencia de oficio derijida a los Prefectos sub Prefectos y Jueces de paz del Departamento Correspondiente al año de 1841."

In testimony whereof, I have hereunto signed my name officially and caused my seal of office to be affixed, at the city of San [SEAL.] Francisco, this 26th day of April, 1856.

JOHN C. HAYS,
U. S. Surveyor General for California.

Extract from the second section of the act of Congress providing for the survey of public lands in California, and for other purposes, approved March 3d, 1853.

The Secretary of the Interior is hereby authorized to cause an

official seal to be prepared for the office of the said surveyor general [California], and any copy or extract from the plats, field-notes, and other records and documents on file in his office, when attested as such by the said seal and the signature of the surveyor general, shall, in all judicial matters, have the same force and effect as the original.

Endorsed: Filed July 15, 1856.

JOHN A. MONROE, *Clerk*,
Pr. W. H. CHEVERS, *Deputy Clerk*.

Copy of Grant to Rio de los Molinos, Approval, and Map.

Sello Segundo—Cuatro Pesos.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

MICHELTORENA. PABLO DE LA GUERRA.

[SEAL.]

El C. Manuel Michelt'a, General de Brigada del Ejercito Mejicano, Ayudante General de la Plana Mayor del mismo, Gobernador, Comandante General é Inspector del Departamento de las Californias.

Por cuanto D. Alberto G. Formes, Mejicano por naturalizacion, ha pretendido para su beneficio personal, y el de su familia el terreno conocido con el nombre de el Rio de los Molinas, colindante con las margenes del Rio Sacramento, comensando los linderos desde el arroyo de los Berrendos, hasta donde uridan cinco sitios de ganado mayor por la parte del sur; practicadas previamente las deligencias y averignuciones consernientes segun lo dispuesto por leyes y reglamentos; usando de las facultades que me son conferidas, a nombre de la nacion Mejicana hé benido en concederle el terreno mencionado declarandole la propiedad de el por las presentes letras sugetandose, a la aprobacion de la ex'ma asamblea departamental y bajo las condiciones siguientes:

1a. No podra venderlo, enagenarlo, ni hypotecarlo, imponer censo venarlo fianza ni otro gravamen alguno.

2a. Podra sercarlo sin prejudicar las travecias caminos, y servidumbres; lo disfrutara libre y exclusivam'te destinandolo al uso ó cultivo que mas le acomode, pero dentro de un año fabricara casa y estara habitada.

3a. Solicitara del juez respectivo que le de la posicion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondra a mas de sus mojoneras algunos arbóles frutales ó silvestres de alguna utilidad.

4a. El terreno de que se hace donacion es de cinco sitios de ganado mayor. El juez que diere la posecion la hará medir conforme a ordenanza quedando el sobrante que resulte a la nacion para los usos convenientes.

5a. Si contraveniere a estas condiciones perdera su derecho al terreno y sera denunciable por otro.

En consecuencia mando que serviendole de titulo el presente y [illegible] endose por firme y valedero se tome razon, de el en el libro respectivo, y se entreque al interesado para su resguardo y demas fines. Dado en Monterey, a veinte de Diciembre, de mil ocho cientos cuarento y cuatro.

MAN'L MICHELT'A.

MAN'L JIMENO, *S'rio.*

Queda tomada razon de esta consecion en el libro respectivo a fojas 14.

JIMENO.

[*For map see original, page* 290.]

Pio Pico, Gobernador Interim del Departamento de las Californias.

La ex'ma asamblea departamental en sesion de hoy ha acordado lo siguiente.

Se aprueba la concesion hecha por el superior gobierno del departamento en titulo librada con fecha 20 de Diciembre, de 1844, en favor del ciudadano Mejicano por naturalizacion Alberto G. Toomes, del parage conocido con el nombre de rio de los Molinos, cituado en las margines del llamado Sacramento en estencion de cinco sitios de ganado mayor de conformidad con la ley de 18 de Agosto, de 1824, y el articulo 5o del reglamento de 21 de Noviembre, de 1828.

Y para reguardo de la parte de Dn. Alberto G. Toomes, lo hugo asi saber. Dado en la ciudad de los Angeles, en esto papel comun por falta de sellado a ocho de Octubre, de mil ochocientos cuarenta y cinco.

PIO PICO.
JOSE MA. COVARRUBIAS, *S'rio.*

Endorsed:

No. 106.—Alber G. Toomes, Rio de los Molinos.—B.—Title, map and approval.

Filed in office March 15th, 1852.

GEO. FISHER, *Sec'y.*

Recorded in book of Records of Ev., vol. IX, pages 259 and 260.

GEO. FISHER, *Sec'y.*

No. 106.—Albert G. Toomes.

Original grant of Rio de los Molinos, five leagues in Butte county, by Gov. Micheltorena, with approbation of departmental assembly, &c.

B. P. ORD, *Attorney for Grantee.*

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such having in my charge and custody the records and papers of the late board of United States commissioners to ascertain and settle the private land claims in California, by virtue of the *favor* vested in me by law, do hereby certify, that the six preceding and hereunto annexed pages of tracing paper, numbered from one to six, inclusive, exhibit a true and accurate copy of a grant to Albert G. Toomes, of a place called Rio de los Molinos, together with the map of the same and the approval of the departmental assembly, and the endorsements thereon, on file in case No. 106 on the docket of said board.

[SEAL.] Given under my hand and official seal, at the city of San Francisco, Cal., this 26th day of April, A. D. 1856.

JOHN C. HAYS,
U. S. Sur. Gen'l, Cal.

Endorsed: Filed July 15th, 1856.

JOHN A. MONROE, *Clerk*.
Pr. W. H. CHEVERS, *Dep'ty Clerk*.

C.—*Letter from Vallejo to Micheltorena.*

SONOMA, *Dic'bre* 28, 1844.

S'or G'ral D. Manuel Micheltorena.

S'or de mi respecto. Las proclamas que trajo el S'or Limantur se han repartido con gusto y cres que han surtido el efecto que se propieso el gob'no todas las dias espiro las comunicaciones que W. me anunciad por el correo del S'or Sutter, y ellas me sacaran de las dudas en que me hallo. Conosco s'or g'l mi prosecion verdadero, como vaise en su apreciable de 18, del corriente, y ureper aun la posecion de pais qe. orife. Yo nada soy, el pais importa demacrado a las intereces nacionales y al decoro del gob'no. No hay una carta de las que he tenido el honor de dirifir a V. que no tengo algo relativo al peligro positivo en que se encuentro la Alta California, y muy principalm'te la parte norte de ello, recuerde V. los anlena'tes y vera que por el Rio del Sacram'to anuncia a V. que era el denotero de milas de emigrantes peligrasas. Estan lleguado actualm'te numerosos partedus de familias, hombres demados, &c., &c., el establecimiento militar del S'or Sutter, y que fuerzo puede imponer les respeto; ninguno Gala no sé cumplan mes oaticasiros, y que todo sea pro-ocuparsiones mas, pero si saberon falledos, se aprocuno mucho a la verdad por las provabilidades. Sus dicusiones interiores, seguram'te el an mucho mas ocasion, y cuo qe. se signe el pais de la manera que hasta aqui, perdera mucho mas pronto su importancia, y nos veremos embustos en minas, si V. no se apresura á calmar lo presente crisis con su accustumbrado terio haciendo qe. los Mejicanos y los Californios (es necesario esta clasificacion) se dieran el abraso de

reconciliacion, deponiendo, ante las aras de la concordia, los odios y los resentimientos asiendose para defender el pais. Permitano V. que le haga estos pequeños observaciones; se dirijir al bien gral. y al honor nacional. Me perserado que de otro manera las cosas se pondran mal y debilitado el gob'no, no podra atender a la segueridad comun. Asi mismo si los digo a la f'ha, Alvarado y Castro, quienes, segun se me asegura se hallan en San José en virtud del art'o 1o, de las convenios celibrados, el 1o De. Despues de los acontecim'tos politicos hu sufrido esta frontera mucho, por falta de fuerzo armada; el armamento de estrangeros hecho por el Sr. Sutter, con el nombre del gob'no ha sido causa de que varias partidas de ellos de 20 y 23 hombres cada una se hayan robado partidos de caballada manza de varios rancho y cometido violencios de otro clace. Con pretesto de la caballada del gob'no han llebadose la de muchos particulares, de ciendo, que el gob'no paga todo inpurem'te les mande decir varios veces que si lo hacener por orden del gob'no que se dirigieran ami y le facilitaria lo que se pidiese pero burlandose de tal franquesa, siguieron como tiendo atentadas, hasta que los pocos soldados de bajo aun se unieron ellos para recibir del S'or Sutter su licencia segun, se los ofrecio. Depo a la calificacion de V. mis apreras, pues reducido a las pasos oficiales. Velarnos sin cesar y aun estoy haciendolo esto no es plasa, ni pueblo, ni nada, como lo he dicho a V. varios veses esta espuesto al pin'o que quiero passerse de la frontera y permanecer mas bajos todavia. Llegan a qui mil cuentos, y otros rantos les iran a V. pero como no se puede evitar, pasan y solo es ercible lo que es rasonable. En todas mis cartas, he solicitado de V. contestacion, y V. no se digno hacerlo de ning'no manera este me han creer qe. esto V. cansado de escribir a quien no infiere mas que molestio, seg'n se crea; pero no les cres asi pr. que provienen de las circunstancias, por ejempló pedirlo al dinero, tropo, viveres y otras cosas, qe. V. no tiene, son molestias necesários qe. ni V. puede remidiar en yo dejar de peder. En fin S'or g'ral por no haber podido exibir mes creditos con el S'or Limantur, hoy a hacer un sacrificio muy fuerto que jamas esperé hacer, fiado en la confianza de qe. V. me libraria de el; po. no ha pedido hacerlo y esta vasta. Le decio todo genero de bienes su af'mo am's y serv'r 9 V. S'm.

MARIANO G. VALLEJO.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and, as such, having in my office, and in my charge and custody, a portion of the archives of the former Spanish and Mexican territory or department of Upper California, by virtue of the power vested in me by law, do hereby certify that the three preceding and hereunto annexed pages of tracing paper, numbered from one to three inclusive, exhibit a true and accurate copy of a communication from

Mariano G. Vallejo to Man'l Micheltorena, governor of California, dated Sonoma, December, 1844, now on file in said archives.

In testimony whereof, I have hereunto signed my name offi-
[SEAL.] cially, and caused my seal of office to be affixed, at the city of San Francisco, this 26th day of April, 1856.

JOHN C. HAYS,
U. S. Surveyor General for California.

Extract from the 2d section of the act of Congress providing for the survey of public lands in California, and for other purposes, approved March 3d, 1855.

The Secretary of the Interior is hereby authorized to cause an official seal to be prepared for the office of the said surveyor general, (California,) and any copy or extract from the plats, field-notes, and other records and documents on file in his office, when attested as such by the said seal, and the signature of the surveyor general, shall in all judicial matters have the same force and effect as the original.

Endorsed: Filed July 15th, 1856.

JOHN A. MONROE, *Clerk*.
W. H. CHEVERS, *Deputy Cl'k*.

Translation of C.

SONOMA, *December* 28, 1844.

General Don MANUEL MICHELTORENA:

MY DEAR SIR: The proclamations which Señor Limantour brought have been distributed with satisfaction, and I believe they have accomplished the intentions of the government. I am daily expecting the communications of which you notified me by Señor Sutter's courier, and they remove the doubts under which I am laboring. I know, General, my real protector, as you stated in your valuable letter of the 18th instant, and still better the possession of the country which you govern. I am nothing—the country is of too much importance to the national interests, and to the honor of the government. Not one of the letters which I have had the honor to address you fails to contain something relative to the positive danger to which Upper California is exposed, and very particularly the northern part thereof. Examine the preceding ones and you see that I notified you that along the Sacramento river was the denoted of thousand of dangerous emigrants. Large parties of families, armed men, &c., &c., are actually arriving at the military establishment of Señor Sutter, and what force is there to teach them respect? None. Would to God that my may not be fulfilled, and that the whole may turn out to be only my suspicions; but if they turn out to be false, they approved very nearly the truth according to probabilities. The internal dissensions afford a much better opportunity, and I believe that if the country continue in the same course which it has pursued up to the present time, it will much sooner lose its im-

portance, and we will find ourselves involved in wars, unless, with your accustomed prudence, you hasten to calm the present crisis, making the Mexicans and Californians (this classification is necessary) embrace each other in reconciliation their hatred and resentments, and unite for the defence of the country. Allow me to make these few observations; they are made for the general welfare and the honor of the nation. I am pursuaded that otherwise matters will go illy, and the government becoming weakened, will not be able to attend to the common security. I have to-day written the same to Alvarado and Castro, who, I am informed, are at San José, in pursuance of article 1st of the treaty made on the 1st of December. Since the political disturbances this frontier has borne with a great deal for the want of an armed force. The armament of foreigners made by Señor Sutter, under the name of the government, has been the cause of various parties of them, each of 20 and 23 men, robbing the various ranchos of their tame horses, and committing other acts of violence, under the pretext of government—horses they have driven off, many that belonged to individuals, saying with impunity that the government pays all. I sent them word several times that if they were doing it by order of the government they should apply to me, and I would furnish them with every thing they should ask for; but they laughed at such frankness, and continued committing attacks until the few infantry soldiers joined them to receive permission from Señor Sutter, according as he had offered it to them. I submit my complaints to your consideration, and, having been reduced to a few officers, we are constantly on guard, and even I am on guard. This is no plaza, nor town, nor anything, as I have informed you on sundry occasions. It is exposed to the first who may wish to possess himself of the frontier and reside still farther away. A thousand rumors arrive here, and as many may reach you; but, since it cannot be avoided, they pass, and only what is reasonable is credible. In all of my letters I have desired your answer, and you have not condescended to answer one of them in any manner. This induces me to believe that you are wearied of writing to whom only troubles give, as it is believed, but I do not so esteem them, because they are the effect of circumstances; for example, the asking of you for money, troops, provisions, and other things which you cannot remedy, nor can I cease to ask. Finally, General, in consequence of not having been able to save my credit with Señor Limantour, I am going to make a very good sacrifice, which I never expected to make, reposing in the confidence that you would relieve me from it; but you have not been able to do so, and that is sufficient. That you may enjoy every blessing, is the desire of your most affectionate friend and humble servant,

(Signed) MARIANO G. VALLEGO.

Endorsed: Filed July 15, 1856.

JOHN A. MONROE, *Clerk*.

Pr. W. H. CHEVERS, *Deputy Clerk*.

E.—Letter to Diego Forbes.

ANGELES, *Diciembre* 27, *de* 1845.

S'OR DN. DIEGO FORBES.

ESTIMADO AMIGO: Durante mi estancia en la Yerba Buena me hizo el honor el S'or Prefecto Dn. Manuel Castro de valuse de mi ayuda para verificar un tratado con el S'or Sub Gobernador de las establicimientos Ruso Norte Americanos cuyo tenor en sustencia es el siguiente.

1o. Dn. Manuel Castro se compromete a hacer todo lo posible para qe. este Gobierno Departamental se comprometa a payar lo qe. Dn. Juan Sutter debe a la compania Ruso N. Americana, que son 31,000$ poco mas o menos en el termino de un año.

2o. El S'or Vice Gobernador se compromete me diante el complimiento del articulo prim'o a ceder a esto Gobierno Depar'l todos los derechos y reclamos qe. tienen contra el S'or Sutter por la cesion qe. le hicieron de todos sus posesiones en el puerto de Bodega y en el establic'mto de Ross.

3o. Que aprobado el tratado por el presente gobernador se entiende qe. sera cumpledo por su sucesor en caso de qe. en el interim llegase otro en su lugar.

4o. Que durante el año qe. se concede en este tratado puede la compania seguir resiviendo las sumas qe. pueda entregar el S'or Sutter, á esta las qe. al fin del tratado se descontaran de las 31,000$ consaveda. Al mismo t'po dejar el s'or vice gobernador un agente apo. derado de la compañia para recivir por partes o por entero la suma espresada de este gobierno departamental.

Observera vmd. como es publico y notorio qe. el S'or Sutter, se verá en la imposibilidad de pagar ninguna suma de consideracion en el termino de un año demo'do qe. el articulo 4o. se admitio por dar gusto al S'or Vice Gobernador Ruso; asi como el 3o. qe. no se le quiso negar por cortesia; quando se sabe muy bien qe. no era necesario; por que los tratos de un goberno legitimo, son respetados por todo gobierno lejitimo qe. le succeda.

El tratado fue firmado en Castellano e Yngles, y sellado por el vice gobernador, siendo testigos el Capitan Lindenberg, por parte de la

5o. que durante el termino de este tratado el gobierno no permitera qe. Sutter, sea molestado en sus posesiones á manos qe. sea necesario por alguna causa criminal

Comp'a R. N. Americana, y yo por parte del s'or prefecto en su presencia del S'or D'n Guillermo Leidesdorff, como agente qe. es de d'ha compania y habiendolo firmado todos solo falta qe. este s'or gobernador ponga su aprobacion y entregarlo mediante recivo a d'ho agente para que el tratado sea obligatorio por ambas partes.

Esto se verificara en quanto llegue a qui D'n Manuel Castro, o

mande el tratado qe. ya debia haberse recivido, pero como es asunto qe. esto gobierno de sea comunicar al supremo gobierno quante antes pidiendo los fondos necesarios para no tener qe. hechar mano aqui de ningun ramo de hacienda desea mandar una persona autorizado a tratar con el supremo gobierno, o con particulares en caso de qe. las atenciones precunanas del gobierno no le peunitan hacer

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[NOTE.—The corresponding place in the original outside the dotted line is worn out.]

desembolsos.

Mediante las conversaciones particulares qe. hemos tenido me ha parecido que estamos acordes sobre los males que puede tener a este pais el establecimiento de Sutter, qe. en el dia es el rendevous de todos los Norte Americanos, ambulantes qe. venien del otro lado de las montanas pedresosas. Asi mismo cuo qe. no sea ese mido de disension, agradarle al gobierno qe. lo ha elejido a vmd. como su representante en esta Costa, este gobierno esta sumamente convencido de que ha llegado el dia en que espreciso desalojar al S'or Sutter, de un establicim'to qe. ya tiene el cirre de fortaliza pero conociendo qe. al verificarlo solam'te haciendo valer las leyes que prohiben semifantes establicim'tos, va. a carsur la completa perdida de las deudas de d'ho sor y deseose de no prejudicar a nadie sino al contrario protejer en quanto pueda el comercio e industria del pais; se ha valido de este medio para hacerse cargo de la dueda mayor asi como

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lo hara a su t'fo de las menores

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[NOTE.—The corresponding place in the original outside the dotted lines is worn out.]

para que las medidas ulteriores tenga que tomar no dejentras de si ninguna senal de riuna.

Considerando que la barca Joren Guipuzcoana debe salir muy pronto y que quizas no habra t'fo de mandar a vmd. copia del tratado le he puesto a vmd. los pormenores pa. su gobierno. En el interim mediante la conanza con que vmd. me ha honrado me he tomado la libertad de insinuar a este s'or gobernador qe. una recomendacion de vmd. al S'or D. Eustaquio Barron, en favor de la persona qe. vaya autorizada por este gobierno, (todavia no esta nombrada y por eso sera preciso usar del termino general de la persona autorizada por este gobierno, asi lo ecsije la presuma del t'po) para tratar con el gobierno supremo o con quales quiera comerciante segun lo ecsijan las circunstancia podra tener muy buenos resultados y en consecuencia recivira vmd. con esta una comunicacion particular del s'or gobernador, que despues se puede rejetir de oficio quando lleguen los documentos.

El S'or Don Guillermo Leidesdorff, tiene copia del tratado; pero como parece ser representante de otra nacion no conviene pedorsela y todo este asunto lo recomiendo a su mas estricto.

Puede ser muy.

Secreto sea qe. vmd. tenga a bien tomar interes o no en este asunto.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such having in my office and in charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, by virtue of the power vested in me by law, do hereby certify that the six preceding and hereunto annexed pages of tracing paper, numbered from one to six, inclusive, exhibit a true and accurate copy of certain loose sheets without signature in the archives of the said office.

In testimony whereof, I have hereunto signed my name offi-
[SEAL.] cially and caused my seal of office to be affixed, at the city of San Francisco, this twenty-second day of April, 1856.

JOHN C. HAYS,
U. S. Surveyor General for California.

Extract from the 2d section of the act of Congress providing for the survey of public lands in California, and for other purposes, approved March 3d, 1855.

The Secretary of the Interior is hereby authorized to cause an official seal to be prepared for the office of the said surveyor general, (California,) and any copy or extract from the plats, field-notes, and other records and documents on file in his office, when attested as such by the said seal and the signatures of the surveyor general, shall, in all judicial matters, have the same force as the original.

Endorsed: Filed July 15, 1856.

JOHN A. MONROE, *Clerk.*
Pr. W. H. CHEVERS, *Deputy Clerk.*

Translation of E.

ANGELES, *December 27th*, 1845.

DIEGO FORBES, Esq.

DEAR FRIEND: During my stay at Yerba Buena the prefect, Don Manuel Castro, did me the honor of requesting my assistance in the celebration of a treaty with his excellency the vice governor of the Russian North American establishments, the tenor of which in substance is as follows:

1st. Don Manuel Castro obligates himself to use every possible exertion for the payment of what Don Juan Sutter owes to the North American Russian Company, within the time of one year, by this departmental government, the amount of which is about $31,000.

2d. The vice governor obligates himself, upon the performance of the first article, to relinquish unto this departmental government all the rights and demands which they hold against Señor Sutter, for the conveyance which they made to him of all their possessions at the port of Bodega and at the establishment of Ross.

3d. That having been approved by the present governor, it is understood that the treaty shall be complied with by his successor, in case another should in the meantime occupy his place.

4th. That during the year granted in this treaty, the company may receive such sums as Señor Sutter may be able to pay, which at the completion of the treaty shall be deducted from the $31,000 above mentioned. At the same time the vice governor leaves an agent empowered by the company to receive in part or the whole of the aforesaid sum from this departmental government.

5th. That during the term of this treaty the government will not permit Señor Sutter to be disturbed in his possessions, except for some criminal offence. You will observe, as it is public and notorious, that Señor Sutter will not be able to pay any large sum within the term of one year, so that the 4th article was inserted out of compliment to the Russian vice governor; as also the 3d; which through courtesy to him was not objected to, since it is well known that it was not necessary, because the treaties of any legitimate government are respected by all succeeding legitimate governments.

The treaty was signed in Spanish and English, and sealed by the vice governor; Captain Lindenburg being a witness on behalf of the North American Russian Company, and I in behalf of the prefect, and in the presence of Don Guillermo Leidesdorff, as agent of the said company; all of whom having signed it, in order that the treaty be obligatory on both parties, only the approval of the governor is wanting; and that it be delivered to said agent upon his receipt. This will be done as soon as Don Manuel Castro arrives here or sends the treaty, which by this time he should have received; but as it is a matter which this government desires to lay before the supreme government immediately, soliciting the necessary funds, there being nothing in any department of the State to appropriate, it wishes to send a person authorized to treat with the supreme government or with individuals, in case the pecuniary requirements of the government may not permit it to make disbursements.

From the private conversations which we have had, it seems to me that we are agreed up the evils that may result to this country from the establishment of Sutter, which is at the present time the rendezvous of all the ambulant North Americans who come from beyond the Rocky mountains. I also believe that this nest of dissension will not be agreeable to the government which has chosen you as her representative on this coast.

This government is fully convinced that the day has arrived when it is necessary to dislodge Señor Sutter from an establishment which already has the appearance of fortification; but convinced that by doing so, only making effective the laws which prohibit such establishments will cause the entire loss of the debts of said Sutter, and desirous not to injure any one, but, on the contrary, to protect as much as possible the commerce and industry of the country, it has taken this means of assuming the responsibilities of the largest debt, as it will also do of the smaller ones, at their turn, in order that the ulterior measures it may have to take may not leave behind them any traces of ruin.

Considering that the barque Joren Guipuzcoana may sail very soon,

and that I perhaps shall not have time to send you a copy of the treaty, I have inserted you the particulars for your government. At the same time, relying in the confidence with which you have honored me, I have taken the liberty of suggesting to his excellency the governor, that a letter of recommendation from you to Don Eustaque Barron in favor of the person who may be authorized by this government (who still is not appointed, and it will therefore be necessary to use the general term, the person authorized by this government—thus the urgency of the occasion requires it) to treat with the supreme government, or with some merchant, as circumstances may require, would be of great service, and, in consequence, you will receive with this a private letter from the governor, which can subsequently be repeated officially when the documents arrive.

Don Guillermo Leidesdorff has a copy of the treaty; but as he appears to be the representative of another nation, it is not proper to request it of him; and I would recommend the whole of this matter to the strictest secresy. It should be kept very secret, whether you think proper to interfere in the matter or not.

Endorsed: Filed July 15, 1856.

JOHN A. MONROE, *Clerk*.
Pr. W. H. CHEVERS, *Deputy Clerk*.

G.—Communication from Sutter to Governor.

Ex'ma S'or Gob'r de este Departamento:

Juan Augusto Sutter ciudad'o Mejicano pr. naturalizacion, y dueno del establecimiento llamado Nueva Helvetia a la orilla del Rio del Sacramento en la frontera del norte de esta California ante V. E. contodo el respecto devido y dignidad qe. a V. E. corresponde me presente y digo que suponiendo qe. mi detencion en esta ciudad proviene de la fuerza armada, con qe. me uni al S'or G'ral D. Manuel Micheltorena, me sera permitido desenvolver las razones qe. a ello me obligaron.

Estando yo en mi dicho establecimiento tube ordenes vervales del espresado S'or G'ral pa. alsitar toda la fuerza qe. y ó pudiese preparar, prometiendome franquear las armas qe. se nesecitasen, y con el objeto de defender los derechos del gob'o qe. se me hizo entender estaban amenasados: Como pr. el reglamento de duchiares me nombro el E'mo S'r Gob'r, entonces Capitan de una de las companias qe. establecian me en contre obligado a obeser la orden, qe. se me comunicaba y qe. el S'or G'ral, repetio como lo manifiesta la nota original qe. puse en manos de V. E. Esendudable E'mo S'or, qe. y ó en tal movimiento no hise otra cosa qe. cumplir con las ordenes superiores, soy ciudadano y mi deber como tal es sujetarme a las disposiciones del poder; yo he protestado y nuevamente protesto estar obediente a las leyes de la nacion Mejicana y a las autoridades qe. deban conocer en mis acsiones, y N. E. no debe dudar qe. sere fiel observador de las ordenes del gob'o qe. V. E. disempeña, pr. que me convenso qe. ellas siran la refracsion del espejo de la ley. Por lo d'ho V. E. conosera qe. mi union al S'or

G'ral Micheltorena, fue partiendo de un principio de justicia pues ni conocia ni entendra otras razones qe. la vos del gobernante qe. me ordenaba. En toda mi marcha no tube mas conocimiento qe. los mismos informes del gefe de la division a cuya disposicion venia y ellos fueron reducidos a qe. hera una revolucion de un pequeño numero de sediciosas qe. solo aspiraban contra los Mejicanos y estrangeros de toda clase, qe. en esta cuidad tenia fuerzas en gran numero qe. se nos devian niur, y en fin se procuro ocultar la justicia y alarma general de todos los Pueblos del departamento contra el batallon compuesto verdaderamente de soldados viciosos y criminales. Aqui en este lugar qe. es en donde he tenido mas demora, es en donde he venido a conoser mis enganos, y si tube gusto y entusiasmo en reunirme a d'ha fuerza hoy me arrepiento de mi cudalidad.

Como tambien me he impuesto qe. se haci alguna observacion de la fortaliza qe. a mi costo he lerantado en el punto de mi radicacion, tengo el honor de poner en conocimiento de W. E. las razones qe. tube pa. ello, y calificadas p. V. E. lo alejaran de toda sospecha. Mi establicimiento esta cituado entre los rios S'n Joaquin y el Sacramento casi a Orillas de este, es el lugar qe. hace frontera a los Tridios mato bulos qe. son los qe. atacan las caballadas de los ranchos; y es el camino de transito pa. todas los viageros del interior, estas razones y no menos la larga distancia de mi posecion a las demas poblaciones me sujiria la idea necesaria de hacer mi fuerte, y para verificarlo tube permiso del gob'o del pais. Si e'mo S'or el lugar en qe. estoy cituado y las continuas amenosos qe. he sufrido y aun sufro sin referir los a contesimientos pr. que deseo mas bien qe. V. E. tenga por otra, conosimiente de los hechos de los Señores Vallejos, hacen una posicion violenta a la quietud y ocupacion en el formento de mis terrenos, y con tal motivo haciendole asi presente al S'or G'ral entences Gob'r D. Manl. Micheltorena, este S'or me alivio con su orden espedida al efecto y que tengo en mi poder. He manifestado a V. E. las razones de haber fortalizado mi establecimiento, mas tambien diré a V. E. que la espresada fortaliza la puse a disposicion del gob'o, afreciendole que podra ocuparla con un destacamento militar hasta de trienta hombres que heran los qe. podian descansadamente estar en su occupacion, y bajo las ordenes de un official de su confianza. Mi objeto unico E'm S'or es cubur esa frontera y librarlo de la estorcion; hoy repeto a V. E. el mismo ofrecimiento asegurandole qe. es precisa pa. evitar los males qe. pueden sobrevenir. Tambien es el punto pa. donde transitan porcion de Cazadores estrangeros y aun qe. y o siempre he avisado al gob'o de tal introducion no puedo meterme en resolver lo qe. al propio gob'o trea, ordenas por todo lo espuesto. A. N. E. Pido y suplico q. se me permita retirarme a mi d'ho establecimiento en razon de los graves perjuicios qe. me resultan en una separacion tan dilatada qe. no espero, y qe. solo la obediencia al gob'o me hiso sufrir; juro lo necesario y espero qe. V. E. me permitiva este papel comun pr. falta del sellado.

J. A. SUTTER.

En Los Angeles, a 26 de Feb'o de 1845.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such having in my office, and in my charge and custody, a portion of the archives of the former Spanish and Mexican territory or department of Upper California, by virtue of the power vested in me by law, do hereby certify, that the four preceding and hereunto annexed pages of tracing paper, numbered from one to four inclusive, exhibit a true and accurate copy of a document on file and forming part of the archives of said office.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San Francisco, this twenty-second day of April, 1856.

[L. S.]

JOHN. C. HAYS,
U. S. Surveyor General for California.

From the 2d section of the act of Congress providing for the survey of public lands in California, and for other purposes, approved March 3d, 1855.

The Secretary of the Interior is hereby authorized to cause an official seal to be prepared for the office of the said surveyor general, (California,) and any copy or extract from the plats, field-notes, and other records and documents on file in his office, when attested as such by the said seal and the signature of the surveyor general, shall, in all judicial matters, have the same force and effect as the original.

Endorsed: Filed July 15, 1856.

JOHN A. MONROE *Clerk*.
Pr. W. H. CHEVERS, *Deputy Clerk*.

Translation of G.

To his Excellency the Governor of this Department:

I, Juan Augusto Sutter, a naturalized Mexican citizen, and owner of the establishment called Nueva Helvetia on the margin of the Sacramento river, in the northern frontier of this California, with all due respect and dignity, appear before your excellency and represent, that supposing my detention in this city to be on account of my having joined General Don Manuel Micheltorena with an armed force, I will be allowed an avowal of my reasons thereof. Being at my said establishment, I received verbal orders from the aforesaid general to enlist all the force that I could prepare, promising to furnish me with the necessary arms, for the purpose of defending the rights of the government, which I was informed were threatened. As by the auxiliary regulation I was then appointed by his excellency, the governor, captain of one of the companies which he was organizing, I was compelled to obey the order communicated to me, and which the general repeated, as shown by the original note which I placed in the hands of your

excellency. It cannot be doubted that in said movement I did more than comply with superior orders. I am a citizen, and it is my duty as such to submit to the disposition of the authorities. I have protested, and now again protest to be obedient to the laws of the Mexican nation, and to the authorities who should take cognizance of my acts, and your excellency should not doubt that I will be a faithful observer of the orders of the government over which your excellency presides, because I am persuaded that they will be the reflection of the mirror of the law.

From the foregoing, your excellency will see that my joining of General Micheltorena was based upon a principle of justice, since I neither knew nor acknowledged any other reasons than the voice of the governor who ordered me. During all of my march I had no other information than the reports of the commander of the division under whose command I came, which were to the effect that it was a revolution of a very few seditious persons, who were only conspiring against the Mexicans and foreigners of every class; that in this city he had a large force that would join us; and, finally, he endeavored to conceal the truth, (justicia,) and general alarm of the pueblos of the department against the battalion composed solely of vicious soldiers and criminals. Here in this city, where I have been longest detained, is where I have learned the deceptions practised upon me, and although I joined the said forces with pleasure and enthusiasm, I now repent my credulity.

As I am informed, also, that remarks are made relative to the fort which, at my own cost, I have constructed on the place of my residence, I have the honor to lay before your excellency the reasons which I had for doing so, an examination of which will remove all suspicion from your excellency. My establishment is situated between the San Joaquin and Sacramento rivers, nearly on the bank of the latter; it is the point which forms the frontier of the Masebulos Indians, who are those that attack the horses of the ranchos, and it is the road of transit for all the voyagers from the interior; these reasons, and not less the great distance from my place to the other settlements, suggested to me the propriety of building my fort, and in order to do so I obtained a license from the government of the country. The location of my place, and the continued threats which I suffered, and still suffer, (without particularizing, because I rather prefer that you may be informed of the conduct of the Messrs. Vallejo by others,) from a powerful opposition to the quietude and occupation in the improvements of my lands, and having for that reason laid the matter before the general, the governor Don Manuel Micheltorena, he relieved me by an order issued for that purpose, and which I have in my possession.

I have explained to your excellency my reasons for fortifying my establishment, and I will now state also to your excellency that I placed the said fort at the disposition of the government, permitting it to be occupied as a military post with as many as thirty men, which were as many as I could conveniently be accommodated therein, and

under the command of an officer of its confidence. My only object is to protect that frontier and rid it of extortion. I now renew to your excellency the same offer, assuring you that it is necessary for the prevention of evils that may occur. It is also on the route travelled by a party of foreign trappers; and although I have always notified the government of such introduction, I cannot take upon me to determine what it belongs to the government itself to decide.

In view of all the foregoing, I pray your excellency to permit me to return to my establishment, in consideration of the serious injuries that will result to me by so long and unexpected absence, and which only the obedience to the government I would have suffered.

I swear the necessary, and hope your excellency will allow me this common paper, there being none sealed.

(Signed) J. A. SUTTER.

Los Angeles, Feb'y 26th, 1845.

Endorsed: Filed July 15, 1856.

JOHN A. MONROE, *Clerk*.
Pr. W. H. CHEVERS, *Deputy Cl'k*.

* * * * * * * * * * * *

I.—Letter from Micheltorena to J. A. Sutter.

Señor Dn. Augusto Sutter, encargado de Justicia representarle del Gobierno en las fronteras del rio del Sacramento.

Siendo muy conveniente que el gobierno conserve en las fronteras del departam'to toda la vigilencia y seguridades necesarios tanto pa. impedir las continuas incursiones de las Indios salvajio sobre los rancherias indefensas, como para impedir al mismo tiempo las rovas y deños que causan las difirentes partidas de gente abanturan de los Estados Unidos como lo que acarade a sultar y roviar a varios establicim'tos de miciones ranchos de particulares al extremo de haberce llarado tres mil bestias caballores de varios especies y no contando el gob'o con sufficiente fuersa pa. cubrir la immensa linea despoblada que divide el terreno de la Republica Mexicana desde el grado 42, norte por donde al mismo tiempo se introducen companios de casadores del establicim'to de la columbia haciendo la pesca del castor en nuestras rios llevandose por este hecho la riquesa del pais y siendo V. un individuo que se halla establicido y en posesion de un terreno el mas inmediata a la linea del norte conceduaba como un ciudadano de la Republica he devido deriger a V. la presente nota por la que pueda autorisida pr. el gobierno para representar en ese funto en todos casas las derechas del pais revestiendolo asi mismo con el caracter de autoridad politica encargado de justicia en su establecim'to de la nueva elvecia y sus contomos pa. qe. pueda puseguir arrestas a las ladrones y gente puniciosa que bagaré por aquellos puntos conectiendo los meles enunciadas, las companios procedentes de la columbia no estan ni han estado autorisadas pr. el gob'no pa. pasar la linea y pescar en nuestras rios y sera muy conveniente si alguna de ellas se precentace pr. aquellos

rios los notifique V. con comedemunte de retirarse, y berifiquera la pesca a los terrenos de la nacion dando cuenta al gob'no de cuantas occurancias succeduron en este respecto. En todas los cosos en que concidere necesarios ataces con las armas alguna nacion de las tribuas salvages pa. hacenlas reducer al orden, devera obtener el primero del gobierno pero sin esto requisito puede per segun a los ladrones en cuachillas y a los que meresan pena corporal los remitira al gobierno con las pruevas de su dilito obnerdo en consonancia con las leyes del pais. De cualesquiera dificultarles o ocurencias qe. se le ofrecire pa. la concevacion del orden en aquella frontera dirigira al gob'no las consultas que tenga la bien en concepto de que la comand'a militar de Sonoma ejerce jurisdiccion hasta la linea que forman los Rios de San Joaquin el Sacramento al norte.

Todo lo que dego a V. para su inteligencia esperamos que de esta sobre vigilancia que el gobierno le encarga se conseguna en parte los males que esta esprenconbando el pais cuyas leyes y derechos hace como sus propriedades esta V. obligado a defender y concervar pr. los juramentos que lo han legado con la patria. Dios, &c.

Monterey, 1o de Septiembre, de 1840.

OFFICE OF THE SURVEYOR GENERAL OF THE
UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such, having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, by virtue of the power vested in me by law, do hereby certify that the three preceding and hereunto annexed pages of tracing paper, numbered from one to three inclusive, exhibit a true and accurate extract from an unbound book in the said archives, entitled "Libro Bonador de la Correspondencia de Oficio, dirijida a los Prefectos, Sub-prefectos y Juezes de paz del Departamente Correspondiente al año de 1840."

In testimony whereof, I have hereunto signed my name offi-
[SEAL.] cially, and caused my seal of office to be affixed at the city of San Francisco, this 26th day of April, 1856.

JOHN C. HAYS,
U. S. Surveyor General for California.

Extract from the 2d section of the act of Congress "providing for the survey of public lands in California, and for other purposes," approved March 3d, 1855.

The Secretary of the Interior is hereby authorized to cause an official seal to be prepared for the office of the said surveyor general (California,) and any copy or extract from the plats, field-notes, and other records and documents on file in his office, when attested as such by the said seal and the signature of the surveyor general, shall, in all judicial matters, have the same force and effect as the original.

Endorsed: Filed July 15, 1856.

JOHN A. MONROE, *Clerk.*
Pr. W. H. CHEVERS, *Deputy Clerk.*

Translation of I.

Don Augusto Sutter, Commissioner of Justice representing the Government on the frontiers of the Sacramento river.

It being proper that the government preserve every necessary vigilance and protection on the frontiers of the department, to prevent the continual incursions of the savage Indians upon the unprotected villages, as well as to prevent at the same time the robberies and damages committed by different parties of adventurers from the United States, such as have just attacked and robbed several mission establishments and ranches of individuals, to the extremity of having carried off three thousand horses of various classes, and the government not having a sufficiency of troops to cover the immense unsettled line which divides the territory of the Mexican republic from the 42d deg. of north latitude, along which, at the same time, companies of trappers from the Columbian establishments are entering and catching the beaver in our rivers, thereby appropriating to themselves the wealth of the country, and you being an individual established upon and in possession of a tract of land nearest the northern boundary line, and esteemed a citizen of the republic, I have thought proper to address you this note, whereby you are authorized by the government to represent all the rights of the country in that section, investing you likewise with the character of a political authority, commissioner of justice at your establishment of New Helvetia and adjoining country, in order that you may be able to seize and arrest the robbers and idle people who may be loafing about those points committing the crimes above enumerated.

The companies from Columbia are not now nor have they been authorized by the government to cross the line and trap in our rivers, and it would be very proper that if any of them should appear about those rivers, you respectfully notify them to leave and to cease trapping upon the lands of the nation, giving information to the government of all the occurrences that may happen with respect to this matter.

Whenever you may consider it necessary to attack any nation of the savage tribes with arms to reduce them to order, you shall obtain permission from the government, but without this prerequisite you may pursue bands of robbers, and those who deserve corporeal punishment, and turn them over to the government with the proofs of their guilt, proceeding in conformity with the laws of the country. Upon all difficulties or occurrences that may present themselves to you in the preservation of order in that frontier, you may ask such advice of the government as you may deem best, inasmuch as the military commander of Sonoma exercises jurisdiction to the line formed by the San Joaquin and Sacramento rivers on the north.

All of which I communicate to you for your information, and we hope that through the superintendence intrusted to you by the government the evils which are experienced by the country whose laws, rights,

and property you are bound by the oaths that bind you to the country to defend and protect, may be corrected. God, &c.

Monterey, September 1st, 1840.

Endorsed: Filed July 15th, 1856.

JOHN A. MONROE, *Clerk.*
Per W. H. CHEVERS, *Deputy Clerk.*

K.—*Letter from Gen'l Vallejo to Gov. Alvarado.*

Comandancia General de la Alta California.

14 de Ag'lo, 841, se contesto.

Ex'mo S'or: Refiriendome a la nota oficial incontesta, qe. con f'ha 27 del ulto. dirigé a V. E. tengo el honor de participarle qe. D. Pedro Kostromitenoff, ag'te del Gobernador de Sytka, va a esa capital a conferenciad con V. E. acerca de la des ocupacion de Ross.

D'ho sor no satisfecho con los motivos qe. aliqué pa. no entrar en trato pr. las casas de Ross y sus dependencias, seindo el principal de esos motivos, el pertenecer de otro esas fabricas al gob'no p. haberse construido en terrenos nacionales y con materiales de los mismos terrenos. Objecté ademas qe. sin una orden espresa de la superioridad, no podra hacer ninguna inovacion, sobre ese respecto, pues, seria traspasar las leyes y mis facultades, instando spre. sobre el atro incontestable que el gob'no tenia a las precitades fabricas. No contento, repito el S'or Kostromitenoff, con esa advertencia una, determino ir a presencia de V. E. a aclarar las dudas qe. conserva acerca del otro oligado a favor del spm'o gob'no. Ha sabido D. Pedro P. conducto irregular qe. ecsista en poder de V. E. la orden tapr. relativa a lo mismo y va a cercurarse de ella.

No juzgo necesario comunicar a V. E. mis refleciones acuca de ese intererante asunto convencedo de gr. V. E. esta tan persuadido como yo de qe. la nacion Mejicana no podria sin menascabo de su diquidad comprarlo qe. le pretenece incuertionablemente.

Rietero a V. E. las protestas de mi consideracion y aprecio.

Dios y Libertad. Sonoma, Ag'to 11, 1841.

M'NO G. VALLEJO.

Ex'mo S'or Gobernador del Departam'to de Californias D. Juan B'ta Alvarado.

Office of the Surveyor General of the United States for California.

I, John C. Hays, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, by virtue of the power vested in me by law, do hereby certify that the three preceding and hereunto annexed pages of tracing paper, numbered from one to three inclusive, exhibit a true and accurate copy of a communication from M. G.

Vallejo to Juan B. Alvarado, governor of California, dated Sonoma, August 11th, 1841, on file in said archives.

In testimony whereof, I have hereunto signed my name officially and caused my seal of office to be affixed, at the city of San [SEAL.] Francisco, this 26th day of April, 1856.

JOHN C. HAYS,
U. S. Surveyor General for California.

Extract from the 2d section of the act of Congress providing for the survey of public lands in California, and for other purposes, approved March 3d, 1855.

The Secretary of the Interior is hereby authorized to cause an official seal to be prepared for the office of the surveyor general, (California,) and any copy or extract from the plats, field-notes, and other records and documents on file in his office, when attested as such by the said seal and the signature of the surveyor general, shall, in all judicial matters, have the same force and effect as the original.

Endorsed: Filed July 15, 1856.

JOHN A. MONROE, *Clerk*.
Pr. W. H. CHEVERS, *Deputy Clerk*.

Translation of K.

General Commanding of Upper California:

MOST EXCELLENT SIR: After stating that my official communication addressed to you on the 25th ulto. remains unanswered, I have the honor to inform you that Don Pedro Kostromitenoff, agent of the governor of Sitka, is going to the capital to confer with your excellency relative to the evacuation of Ross.

The said agent not being satisfied with the reasons which I urged for not entering into a negotiation for the houses of Ross, and their appurtenances; the principal of these reasons being that these buildings, by right, belong to the government for having been constructed on the national domain, and of materials from the same. I also alleged, that without an express order from the government I could make no innovation upon that matter, because it would be transcending the laws and my authority, always dwelling upon the incontestable right which the government had to the aforesaid buildings. Señor Kostromitenoff, I repeat, not being content with this remark of mine, determined to go to appear before your excellency to settle the doubts which he entertains relative to the alleged rights in favor of the supreme government.

Don Pedro has learned from me, an irregular source, that your excellency had in your possession the supreme order relative to the same, and goes to acquaint himself therewith.

I do not deem it necessary to communicate to your excellency my views upon this important subject, satisfied that your excellency is as well convinced as I am that the Mexican nation could not, without a

derogation of her dignity, purchase that which unquestionably belongs to her.

I renew to you the assurances of my consideration and esteem.

God and Liberty.

Sonoma, August 11th, 1841.

(Signed) WM. G. VALLEJO.

To his Excellency JUAN B. ALVARADO,
Gov. of the Dep't of the Californias.

Endorsed: Filed July 15, 1856.
JOHN A. MONROE, *Clerk.*
Pr. W. H. CHEVERS, *Deputy Clerk.*

Brief by John H. McKune on the part of the Government.

THE UNITED STATES
vs.
JOHN A. SUTTER. } No. 319.

In the U. S. Dist. Court for the N. D. California.

Brief for the U. S.

1. The petitioner claims 33 leagues of land under two alleged grants, one dated June 18th, 1841, for 11 leagues of land; the other bearing date Feb'y 5th, 1845, for 22 leagues of the "Sobrante" or surplus within the same rancho; each grant reserving a surplus for the benefit of the nation. (See translation of first grant, page 120 of transcript; and of 2d grant, page 122.)

2. The grant of 11 leagues was not issued in the usual form, or according to the established practice of the Mexican government, in several respects. 1st. The petition of Sutter was not referred by the governor to any local authority, or to his secretary. 2d. No information (informe) was taken. And 3d. The grant was not in the usual form to the grantee and his family, but was made to the grantee for himself and twelve other families.

3. Capt. Sutter settled in the district of the Sacramento in the latter part of 1839, or the fore part of 1840. He established two settlements before he presented his petition to the governor—(see his petition, page 12 of transcript,)—one at a point now occupied by the city of Sacramento; the other at Hock Farm, the home of the claimant, on the west side of the Feather river, and some 20 miles from the American river, in a right line.

4. On the 15th of June, 1841, the claimant presented to the governor a petition setting out the advantages attained and to be attained by the establishment of a settlement called "La Nueva Helvetia," situated towards the north, according to the land represented in the diseño, not comprising the land which is periodically overflowed in winter, and asking favorable action thereon.

5. On the 18th of June, 1841, the governor issues a grant reciting material parts of the petition. The granting words as translated are:

I have granted to the said Señor Don Augustus Sutter, by these present letters, for him and his settlers, the said land, New Helvetia, subject to the approval, &c. By the 3d condition the land is of the extent of 11 leagues as exhibited in the sketch, without including the land overflowed by the swelling currents of the river.

It is bounded on the north by the Three Summits, and the 39° 41′ 45″ north latitude; on the east by the margins (margenes) of Feather river; on the south by parallel 38° 49′ 32″; and on the west by the Sacramento.

6. It may be said that the grant was made in conformity with the petition, and that the petitioner could just as easily have obtained a grant in the usual form for the benefit of himself and family, as to have taken the concession to himself and colonists. But this does not appear to be sustained by the facts. His petition to the governor was no doubt drawn at the office of the governor after consultation with him, and to meet his views. The simple fact that the concession was not taken to Capt. Sutter for his own use, shows that the grantor had some will in the matter, and in accordance with the determination of the governor the claimant concluded to take his title.

7. This brings us to the examination of the nature and character of the concession. In the grant itself it is expressed that the grant is made in accordance with the law of 18th August, 1824, and the ordinance of the 21st November, 1828, and it will be necessary to examine that law and that ordinance in the progress of the argument of this case, to ascertain what rights passed under them the claimant.

8. Article 14, of the law of 1824, reads as follows: "This law guaranties the contracts which 'empresarios' may make with the families which they may bring out at their expense, provided they be not contrary to law." In the executive regulations of 1828, providing the manner of carrying the law into effect, it is directed, among other things, that the political chiefs of the territories shall grant vacant lands to empresarios for the purpose of cultivating and inhabiting them. The grants made to empresarios for them to colonize with many families shall not be held to be definitively valid until the approval of the supreme government is obtained. (See Rockwell's Spanish and Mexican Laws, pages 462, 463, 464.)

9. The claimant's concession recites that Don Augustus Sutter has solicited for his own personal benefit, and that of twelve families, eleven leagues of land, &c. The words of grant are: I have granted to the said Sutter, for him and his settlers; clearly indicating that the concession was made for a colony, and not for the personal benefit of the claimant alone, making the grantee a contractor, and giving him lands for his colonists jointly with himself. This constitutes him an empresario, and his title-papers are to be construed into a contract tripartite, the government stipulating to furnish the land, the grantee to furnish the colonists, and the colonists to settle on the land, so as to comply with the spirit and meaning of the conlonization law.

10. This view of the matter is further strengthened by the words in

the grant—"subject to the approval or disapproval of the superior government." If it had been intended as a private grant, it would have been sufficient to obtain the approval of the departmental assembly.

11. To ascertain whether the claimant has complied with the spirit and meaning of the law, and with the terms of his contract, it will be necessary to recur to the reasons which induced the government of Mexico to make the grant. Manuel Jimeno, who has been secretary under Alvarado and Micheltorena, in a report made to the governor on a petition of Wm. Gulnack for the land claimed by C. M. Weber, in San Joaquin county, gives the true reason for making such grants. He says: "If he (Gulnack) petitions for himself alone the extent (eleven leagues) is very great, and after his example others will petition, and within a short time there will be no land left for others who may wish to settle on the river San Joaquin." Accordingly the grant was issued to Gulnack, for himself and twelve other families, (the least number allowed for a colony.)

12. The same reasons operated on the mind of the governor to induce him in 1841 to people the northern frontier, not with one man on a farm of eleven leagues, but with twelve families. Americans can well understand the policy which will apportion the land of new countries among a large number of persons rather than extend the right of property in one man over enough land for a whole country. There should have been, then, in accordance with the evident intent of the concession, twelve families settled on the land embraced within the grant to comply with the terms thereof.

13. There is no time fixed in the instrument within which the settlement must have been made; and a fair construction of the matter would be to give the contractor a reasonable time to comply with his agreement, and within that reasonable time to comply with his agreement, and within that reasonable time the settlement must have been made *on* the right lapsed, on the same principle that a house must have been built within the time named in the law, or the grant would forfeited.

14. This mode of settlement was adopted by Spain in the early settlement of Spanish America. An empresario was constituted sometimes with the title of adalantado, and authorized under the laws to colonize certain districts. Cases of this kind may be found in Bancroft's History of the United States, vol. 1, in the early settlements of Florida. And as a first and leading case under the Mexican colonization law of August 18, 1824, the settlement of Stephen T. Austin in Texas deserves particular notice as exhibiting the true policy of Mexico in colonizing her vacant lands. The empresario by that contract took five sitios of grazing land, and five labors, (each 1,000 varas square,) one half of which shall be without the faculties of irrigation, for each one hundred families settled. Each settler was to have a specific tract of land. The title to the land was conveyed to the settler by the empresario jointly with a commissioner appointed by the government; and the empresario was not in any manner, or for any purpose, considered as the legal owner of the soil. The government controlled the

settlement by prescribing rules to the empresario, and generally by directing how and to whom the lands should be conveyed. (See 1st White's Recopilacion, vol. 1, from page 571 to 622.)

15. Capt. Sutter in 1839 established himself near the south bank of the American fork, and also about that time on the Pacific coast, at the Russian settlement of Ross. It is not proved that at that time he had a title to either place. After exploring the country in 1841, he applied to Gov. Alvarado for a grant. Suiting himself to the views of the government, he applied for and received a concession in the nature of a contract to settle twelve families, and we are now prepared to examine the question, What rights passed to the petitioner? This must be done by a fair construction of the instrument itself, and as the document is silent as to the practice necessary in conveying title to the settlers, this court is now called upon to construe it so as to effect the intention of the parties. There is no proof of confirmation by the departmental assembly, or by the supreme government; therefore the concession, whatever may have been intended, cannot be held "to be definitively valid." It is imperfect, inchoate, and incomplete, and the application to this court is, that a perfect, choate, and complete title may be delivered to the petitioner by government. Now, if the petitioner held the land in trust for himself and twelve other families, this court cannot, according to any principle of equity known in the civil or common law, give to him a complete title discharged of the trust. The cestui que trust may enforce his rights against a trustee, but courts never, without some fault in the cestui que trust, discharge the trustee from his liability, but will compel the strict performance of the trust.

16. The instrument upon which the claim is predicated may be regarded as a nascent contract. The government undertook to furnish eleven leagues of land, and the claimant undertook to furnish twelve families to receive the title. The number is specific, not twelve or more. The concession is to him (the petitioner) and that number of families, which families must be furnished, and the portion of the eleven leagues which each was in equity entitled to have been conveyed to the head of the family entitled to it. No other legitimate disposition could be made of the matter. Where there is a trustee there must be a cestui que trust, either in esse or in prospect, and if no other person ever existed to receive the title, when such a state of things resulted from the neglect or malfeasance of the trustee, it would be a strange law which would give to him the property he held for another. An attempt is made to prove that twelve families and more were established on the land in due time, and for this purpose a variety of evidence is offered to show the number of residents who have from time to time occupied certain land *land* under the petitioner, none of which appears to prove the necessary facts. The court will notice that it is not inserted in the concession, by way of condition, that twelve families shall be settled on the land within a certain time; the grant is to him and twelve families. Now, it may well be doubted whether the concession itself is not void for want of persons to take the title. But, if

the petitioner could lawfully hold for the benefit of the twelve families, he could not hold for any other purpose, because his title papers clearly expressed that intention. We will now ask the counsel to point out the twelve persons entitled to receive their proper share of the land claimed. It is true there are large settlements on lands claimed by Sutter; but which of the settlers were adopted as the twelve? When and how were they selected? How did Sutter apportion the land among them? One of the first principles of equity prescribes, that he who seeks equity must do equity. By what rule in equity will the claimant in this case be allowed to appropriate to himself for his own use the lands granted for the benefit of others? and yet this is the demand—the relief asked for.

17. If I am right in the principle governing this case, the petitioner would be compelled to show that he complied with the law, and that each of the twelve families was colonized on the land within the spirit and meaning of the colonization law of 1824; one of the prime objects of that law was to colonize the vacant lands, giving the settlers such an interest in the soil as would attach them permanently to the institutions of the country. They could then be depended on in time of peace to increase the productive wealth of the country, and in war they would have their property to defend, and would be identified with the interests of the country.

The petitioner would further be compelled to give the names of those entitled with him to receive the land, otherwise no proper decree could be entered. A decree of confirmation to Sutter alone would be contrary to the spirit and meaning of the concession, and a decree to him and twelve others, without *meaning* them, would be void for want of certainty. The evidence does not disclose any twelve of the persons named in the proof as so entitled; consequently the claimant is not entitled to confirmation of his claim.

17½. There is no distinction on the point here involved between the laws of Coahuila and Texas and those affecting land titles in California. The law of 1824 remained, and still remains unchanged; the methods of carrying the law into effect were various, but in all Mexican States and Territories the lands passed under the law of 1824, or not at all. There have been numerous decisions in Texas illustrating that enactment, so far as it applied to empresario grants, which will be referred to in this brief.

18. On the hypothesis that the instrument may be considered a concession to J. A. Sutter alone, has he shown himself entitled to a confirmation. It may be urged that the opinion of the Supreme Court in the Fremont case decides that the non-performance of conditions will not prevent a confirmation; that the claimant is still entitled, though he never settled himself or the families mentioned on the land, or performed any other of the conditions annexed.

19. If the concession can be regarded as single, and conveys to the claimant alone a title to the land, the statement that the concession is to Sutter and twelve families must be regarded as a condition annexed,

the non-performance of which must be excused, or it will defeat the grant; and the Fremont case does not decide the contrary. It is respectfully submitted that the point really decided in that case was simply that the facts proved showed an excuse for not performing the condition, and that that excuse avoided a forfeiture.

20. There is no testimony that Sutter ever settled one family on the land described in the grant. He made his own home inside of those boundaries, and he still resides there, having no land elsewhere; but he never settled twelve families on the land, and he now offers no excuse therefor, but his attorneys set up that his land lies on the east of the Sacramento river, extending many miles south of the mouth of Feather river, and there were many families settled on that territory; the location, I contend, was by no just construction of the evidence in the case within the limits of the land granted, and this settlement could, therefore, be of no avail in a performance of the condition of this grant.

21. The grant is introduced as the evidence of title. To make a conveyance words of grant must be used, and when the words used in the instrument are clear and unequivocal they must govern in its construction. In certain cases of ambiguity oral testimony may be introduced to explain, but never to vary, a written instrument, or supply a defect. (2d Phillips' Evidence, 344, 345, 350.)

Patericke vs. Porolet, 2d Atkyns, 382; Lord Cheney's case, 2d Philips' Evidence, 333; note and cases cited page 350 same volume. The rule is too well settled to be shaken, and it is so well founded in reason that it will scarcely be overruled by any respectable tribunal. Now apply this rule to the facts of this case, and it will be found that near nine-tenths of all the matter produced and taken in this case, and offered in evidence, is entirely irrelevant. There is no ambiguity in the words of description contained in the concession. The grant was made after an accurate exploration of the country. There is no pretence that the location of the different rivers was not known by the governor when he made the grant. The map (if one was shown the governor) exhibited the locality described in the grant. Captain Sutter at that time had established himself in the frontier; a part of his effects were at Bodega, a part at the American fork, and his establishment extended as far as the Buttes. He asked for eleven leagues in his establishment; that amount was all he could hold under the law. The governor acceded to his request; eleven leagues were granted to him and his colonists. Those eleven leagues were to be taken within certain lines of demarcation set down in the concession; those lines embrace near four hundred square miles of land; the surplus was, by the terms of the grant, to be reserved to the nation, and the law provided the means of separating the land granted from the public domain, to wit, by judicial survey. Till that act was accomplished there was no segregation; the eleven leagues were not separated from the public domain, and consequently remained of that domain, and passed to the government of the United States.

22. The claim of Capt. Sutter to land not described in his grant

is founded on, 1st, the plural form of the words in the grant forming the eastern boundary, "las margines;" 2d, upon a copy of a map alleged to have been before the governor when he made the grant, and referred to therein by way of description; and 3d, upon the name of New Helvetia, which it is alleged defines and varies the boundaries.

23. The language of the grant is on the east by the margins (las margines) of Feather river. Now it must strike any one at first view that an eastern boundary would require all the land granted to lie toward the west. The Feather river could not be an eastern boundary of a tract of land lying on both sides of that river.

The case of McIvor vs. Wharton is cited by the commissioner in giving his opinion, as authority to show that the Feather river, though an eastern boundary, is not exclusive of that river, but instead of proving the proposition, it rather strengthens the converse. A plat was referred to in a patent, and courses and distances were also set down in the grant. The plat and the courses and distances disagreed; the land called for was on Crow river; non constat, it was not on both sides of it. The plat showed clearly the land was on both sides, and the question decided was the familiar one that courses and distances were governed by natural objects, and those natural objects could be as well shown by a diagram made part of the grant as by any words in the patent. The general rule that parol testimony will not be introduced to vary an instrument in writing, is without exception.

24. But it is said the word margins (margines) would not be satisfied without taking land on both sides of the river. This appears to me a very strained construction of that word. In the first place, that view of the meaning of the word is inconsistent with the words, on the east by, immediately preceding it. If the word margins had been used without other words explaining its meaning, some excuse might be urged for the construction given by Judge Thompson, placing the land on both sides. If the land is to be taken on both sides, how much must be surveyed on one and how much on the other, and is there any restriction as to boundary on the east? Cannot all the land as well be taken on the east side of the river, except enough to include a mere margin on the west side of the river? At the commencement thereof, the grant recites that the claimant has petitioned, &c., for 11 leagues of land on the margins (translated borders original margines) on the river Sacramento. Here, then, in the very instrument itself is an explanation of the meaning attached to that term in the grant. It is not contended that Sutter ever petitioned for land on the west side of the Sacramento, and certainly he claims none on that side. The recital is made with a view to obtain the grant, and the plural form of the word is used. Now, why did not the decree extend across and include land on the west side of the Sacramento? The language of the grant is, I have granted the said land (i. e. the land petitioned for). I answer, because there is no such power in the word margines as contended. But to make the matter still more palpable, we have obtained documents from the surveyor general's office, showing how both Sutter and the govern-

ment understood that term, and showing that the word margines was uniformly used even where the land asked for and granted was clearly located on one side only of the river named, and which constituted natural boundary. These documents are marked X Y Z No. 5, X Y Z No. 6. The maps filed in these papers show the exact locality. There is no mistaking the fact that the land lies on one side only of the river, and yet the word margins, in the plural, is used to indicate that bound. Such seems to be the uniform use of the term in Mexican grants.

25. To pursue this matter further. If the margins of Feather river are a boundary on the east, how can those same margins become a bound further south than the mouth of that river? The decree, as it now stands, is an anomaly; both sides of Feather river are an eastern boundary, and that, too, some 12 or 15 miles further south than the river extends; upon what principle, we are not enlightened. We submit that a decree should be, 1st, certain; 2d, not inconsistent with itself; and, 3d, in harmony with the pleadings and evidence resulting in the decree, and in this case the decree violates each of those propositions.

26. The claimant at the time he filed his petition before the land commission, filed also a copy of map referred to in the petition as marked A, but accidently marked B, and referred to throughout the case as Exhibit B. This copy is claimed to be a true exhibit of one before the governor when he made the grant, and the one referred to therein, according to which the grant was made.

Now, there is not only no evidence to show that the copy exhibited is a true one, but there is positive evidence to the contrary. In the early part of 1841, Capt. Sutter, with a view to present his petition to the governor for a grant, employed J. J. Vioget to explore the country and make him a diseño. He accordingly proceeded, and in the fore part of that year completed two maps, which he delivered to petitioner. (See depositions of Vioget, pages 21, 49, and 102 of transcript.) There is no evidence in the case tending to prove that either of those maps was presented to the governor, except the fact that the maps were made about and just before the time. The diseño, in the ordinary course of business, goes with the expediente and remains in the archives, and Alvarado swears (answer to question 5, page 98) that he delivered the one used by him to the secretary. There appears to have been no search for the map so used, in the archives, and it does not appear that that map is not still in the office of the surveyor general. The general rule of law is, that the claimant must prove the loss of the original before he will be let in to prove the contents. It is said by the commissioner that the map, or a certified copy of it, was annexed to the grant and delivered to the grantee; there is no evidence of that fact, except that a map was seen in 1849 and '50 by John S. Fowler, annexed to the grant. This certainly does not prove that it was thus delivered to the grantee; on the contrary, Alvarado swears that the diseño was delivered to his secretary, and he does not know why it is not in

the office now. It was certainly always the practice to retain the original diseño as a part of the expediente.

26½. The commissioner remarks that, we know from our observation in numerous cases which have come before us, that it was a frequent custom of the Mexican authorities to annex certified copies of the maps contained in the expediente to such grants as had reference to them. The commissioner is simply mistaken in his statement of fact. It sometimes happens that a party files his grant annexed to a map, but this does not occur where there is an expediente from the archives, and there is no instance in the cases presented to the land commission where it is shown that either the original or a certified copy of the diseño was annexed to the grant by the authorities at the time of its issuance. Those cases having maps annexed to grants are generally such as are produced from the hands of interested parties, having no counterpart or other evidence of its issuance in the archives, or such as were procured subsequently, certified by the secretary to be copies, to be used in making the judicial measurement. These last are usually attached to the recorded proceeding of the official measurement. Such a copy always has the due authentication of the secretary, which the map here mentioned does not appear to have possessed. It is true that in the translation of the twenty-two league grant, filed in the case, reference is made to the diseño as attached to the grant, but the translation is incorrect: the word is espediente, as in all other cases, and not grant.

27. How did the original of the copy produced come into the hands of claimant? Evidently by and through Vioget, and that original never was before the governor. (See deposition of Alvarado, page 98, answer to question 7.) Here is positive proof that copy B is not a copy of the map used by the governor, and referred to in the grant. It may resemble it in its general outline, and no doubt it does, but, not being identical, is not entitled to be considered as evidence in the case. The details are not the same, and the particular portion of the copy upon which the commissioner founds his decree in fixing the southern limit is an interpolation. Alvarado, who alone testifies as to the character of the map presented to him, and referred to in the grant, gives no countenance to the idea that it had upon it a line marked 38° 49′ 32″ south of the American river, and so absurd a proposition finds no countenance in any of the proofs.

28. The method of proving copies of maps adopted by the counsel for the claimant may be very convenient, but is not necessarily, for that reason, allowable by the rules of evidence. If it were an examined copy it would be good, perhaps, but a copy produced from the pockets of an interested party, and annexed to the deposition of a witness, who saw the original on some former occasion, with his statement that he believes it a true copy, is certainly not admissible, because it is leading a witness to a point you desire him to state on oath, if admissible at all, would not be reliable.

29. Parallel 38° 49′ 32″ is made the southern boundary of the land within which the grant must be taken. Now, to suit the views of in-

terested parties, a line has been traced at the bottom of map B, facing page 96 of transcript, with those figures marked on it. The line of latitude passing through the fort, some six miles further north, is 38° 45′ 42″. The whole map is perfectly consistent with the location of this latter parallel, but inconsistent with the one further south. The map evidently was not made with parallel 38° 49′ 32″ marked on it at all. The only proof of the genuineness of the copy is contained in the depositions of Vioget and John S. Fowler, the former of whom made the maps; and it is sought to fix the genuineness by showing that he made the map, and that this is a copy of the one he made; but fortunately we have an exact copy of one of the maps he made, which *which* copy was made by him in 1843, and is on file in the case. This copy is found facing page 106 of transcript, and the deposition of Vioget makes that perfectly authentic, and proves that so far as Vioget's map is of force in the case, parallel 38° 49′ 32″ is not shown on it. Vioget says, p. 103, answer to question 5, that the line was marked, but not the numbers. It will be seen, on referring to the map, that the numbers are 38° 41′ 32″. We think, then, that the proof is positive: 1st, that the claimant has not produced a copy of the diseño used in making the grant, and referred to therein; and 2d, that the line 38° 49′ 32″ has been interpolated upon a private map made by Vioget. In either instance the decree of the land commission is wrong, and should be reformed.

30. To pursue this matter further: Governor Alvarado, page 99, answer to questions 5 and 6, says he had the map before him when he drew the grant, and that he set down the numbers in the grant as he saw them on the map. This proves that he did not have the original of copy B before him, as the description would be incongruous in many particulars, and to such an extent that it could not be the result of mistake; and yet it is upon this kind of testimony the claimant seeks to vary the terms of the concession.

31. What the diseño annexed to the expediente really did show is left to conjecture in part, but it is presumed that it showed the parallel 39° 41′ 45″ and 38° 49′ 32″, as Alvarado set those numbers down in the concession. It is also presumed that parallel 38° 49′ 32″ cut Feather river at some point *at* that river is made an eastern boundary, and it could not have been such bound otherwise; but whatever may have been the contents of that map, certain it is, it is not in evidence, and the concession must stand alone, and without aid from the map in locating the land.

32. Whatever rights under that grant the claimant has were conferred upon him June 18, 1841. He received no papers before and after that time, with the exception hereafter noted, and if his title passed at all, it passed by that grant. Did the survey of Vioget confer title? That was a mere private exploration of the country with a view to present his petition. Did his survey fix lines to the grant? Certainly not, unless the governor adopted that survey, and by apt words engrafted it into his concession, and made it a part thereof.

33. But it is said there are certain dotted lines on the borders of the rivers, and as it happens to suit the purpose of the grantees of claimant to have the arable and timbered land on the margins of the rivers, they claim that confirmation should be decreed to correspond with that dotted line. Now this is evidently an after-thought. In the first deposition of Vioget he tells us how he surveyed the land. In the second, he says he surveyed what he intended for two leagues at the mouth of the American river, and the nine leagues which Sutter wanted he surveyed on both sides of the Feather river. How much he surveyed on each side he does not inform us, or in what form or place. This survey was under the interested party, as he wanted it. But the making of the grant was a different thing; any claimant might still change his wishes. The purposes of government were at all events to be subserved, and the governor had the right to fix the locality and the terms of the concession. He did so. This was the termination of his (the governor's) connection with the transaction. All the negotiations previously pending were merged in the grant. The expediente was made up and deposited in the archives as a perpetual memorial of the facts therein stated. It was an act of government. It imputed full verity, and was entitled to full faith and credit. Copies of these proceedings are here produced from the office of government. If they are of any use they must be taken as true, and they show that the claimant received his concession under terms and conditions did not in any respect while he comply with the law in making his settlement. They show, moreover, that this land was situated, by the positive terms of his grant, between the Sacramento and the Feather rivers, and could not be located without these boundaries.

34. The home of the grantee is at Hock Farm, within the limits described in the concession. The other settlements grew up spontaneously, without reference to proprietors' rights in the soil. The fort was established as a trading post. He afterwards extended his improvements in other directions; he established a mill at Coloma, on the same stream, and with the same view as he had in establishing himself at the fort, and with the same rights in the soil. Will not the *the* gentlemen conducting the claimant's case ask for *what* settlement and the one at Fort Ross to be confirmed to claimant, under the same right and with the same prospect of success, as to ask for lands south and east of Feather river?

35. There is no obscurity in the grant. It is a grant of 11 leagues with well defined limits, and admitting that the latitude was not correctly ascertained by Sutter, is there any mistake about the Three Peaks? Is there a mistake about Feather river as the eastern bound, or the Sacramento as a western? What can be more certain as a boundary than a river, and what more fixed than the eternal hills? There is no mistaking these as landmarks, and for that reason the law has wisely fixed the rule to be that such monuments shall prevail over those less fixed, and more liable to be changed or misconstrued. The commissioner in rendering his decision has reserved this rule, and taken a

landmark as a southern bound, which is not only sustained by no proof, but is founded on an interpolation of an absurdly erroneous degree of latitude on the map presented, but not proved as that referred to in the grant.

36. The claimant contends that, as the map filed exhibits a large scope of country, and the concession is according to the diseño, the land may be taken at any place within the exterior bounds of the map. This is certainly erroneous. According to that, the land might be taken on the west of the Sacramento, as the map exhibits a territory extending from the Coast range to the Sierra Nevada, and in latitude more than 100 miles. True it is, that the grant was according to the map; but there was and is a still further restriction in the instrument.

Now, we are construe the concession with the map, whatever it was, (and we may for this purpose take the general outline of the copy filed as correct,) so that the whole shall stand. There is no difficulty in this, as they are perfectly consistent. The map shows a large scope of country, and the grant says 11 leagues are granted, according to the diseño, and then restricts the grant still further by locating the land granted within certain other descriptions shown on the map also.

37. It is only when there is an attempt to twist and distort the rules of evidence to suit the views of interested parties that any difficulties arise; but it so happens that the parallel 38° 49′ 32″ is also at the point we should look for it, to make the description perfect and congruous, (see map facing page of transcript, marked X Y Z No. 1.) This map is filed by the government, to show the exact situation of the rivers, the lines of latitude, and the quantity of land, as shown by measurement, in the government surveys. It is highly probable, that, before the grant was made, the exact location of the line of latitude 38° 49′ 32″ was ascertained, and that it was marked on the map before the governor, when he made the grant, as cutting Feather river; otherwise the description would not have been correct, and Alvarado took those figures from the map. They were not marked on the Vioget map; but if they had been, with the errors constant in that map, the line would have crossed the Sacramento river about five miles south of the mouth of Feather river; so that the construction contended on the part of the government is perfectly consistent with the actual facts and with all testimony.

38. If there were any ambiguity in the language of the description, if there were any doubt as to the location of the Buttes, Feather river, or the Sacramento, parol testimony would be received to explain (not to vary) those terms. There is no necessity to consider the lines of latitude at all in locating the land, as there is a good description without, and by monuments, which must govern. A triangular piece of land may be bounded by three lines; and this is the case in hand: throw out of the case those uncertain lines, and take those parts of the description which are certain, and let them govern in the matter of description. This is in accordance with the sound policy of the law, and the only certain and just rule.

39. True it is, that the intention of the grantor in making the grant must be regarded, and that the grant must be interpreted as the parties would have regarded it immediately after its execution; but how are those objects to be attained? Certainly not in any other manner than by an examination of the words of the grant, (except in ambiguities,) and those words must be taken in their plain and obvious signification; any other construction would enable me to vary a written instrument.

40. There are a few plain general rules of law, often quoted and always acted upon, which must govern this case in the location of the land within which a survey must be made:

1st. The greater effect must be given to the most certain calls. 17 Mass. 210; 9 Cranch, 187; 7th Wharton, 7.

2d. When there are many calls of description, some of which are certain and consistent, and others uncertain and inconsistent, the former govern the latter. 2d Wharton, 316.

I need not call the attention of the court to the fact that rivers and mountains are more certain than any artificial structure or lines, and less liable to be mistaken; but I will call your attention to the fact that all the inconsistencies in this case are the result of an attempt to shift the location of the land. This proposition may be properly added and applied in this case, that where the court can, *and* they will, construe the words of a grant so that there shall be no inconsistencies or contradictions; and by locating the land west of Feather river this is accomplished.

41. But it is said that Capt. Sutter, before he made application for a grant, named his settlement New Helvetia, and the grant is of the same name; therefore the name passes the land; and that it was the intention of the governor to grant, and Sutter to receive a grant, of his settlement on the American river. Of this there is no proof; he could not, in a single grant of 11 leagues, expect to receive 500 leagues of land, and there is no evidence they intended to divide the grant, locating it in two different places. The settlements both at Hock Farm and at the fort were commenced before the date of the grant, and continued afterwards. Alvarado swears that he wrote down in the grant what his intentions were in making the concession, and Sutter, in 1848 and '9, understood the fact to be that his grant was located west of Feather river. See the deposition of Jesse Morrill taken in this case, where it is proved that Sutter explained to witness that his grant did not extend to Sacramento, but that he had his land at Hock Farm; see also the deposition of Mrs. Hopper, who testifies to similar facts. These matters came from the claimant, while yet he was under his own control, and show his intention in the premises.

42. But it is said the term New Helvetia has a controlling influence, and gives locality to the grant, and fixes it so as to include the establishment south of the American river. Now a conveyance of Blackacre would be good, provided the place and limits were well known and universally acknowledged; and provided, further, there were no restrictive words modifying the boundaries to which that name

applied. But a conveyance of Blackacre, when the conveyance itself was the commencement of the name, would hardly be held good. In this case there is no proof that before the grant any such name was given to any locality in California, with limits sufficiently defined for the boundary of a grant. The claimant was a native of Switzerland, and in honor of his fatherland he named his grant after his Alpine home, in token of his affection for the home of his youth. Thereupon New Helvetia became an existence with the limits fixed in the grant, and to be fixed by a judicial survey. Sutter still continued his settlement on the American river, and called that New Helvetia; and while it is true, as the witnesses have stated, that the settlement at the fort was called by that name, and Capt. Sutter kept an establishment there, and if you will make that his headquarters, believing it to be within his grant, it is equally true that New Helvetia, within the meaning given to that name in the grant, extended as far north as the Buttes. The eleven leagues are to be taken in his establishment named New Helvetia; and then there is a still further restriction within certain other boundaries, to wit, the Sacramento and Feather rivers and the Buttes. See the last deposition of Vioget, who explains what was understood by the term New Helvetia; also the last deposition of Bidwell, taken before a notary public, and Samuel Norris, who show the extent of Sutter's claim.

43. Those landmarks I have named in the grant are of such a character as to control the location—they are not liable to change. The location of rivers and mountains cannot well be mistaken; and yet to sustain the hypothesis maintained by the claimant, the Three Peaks, which are as well known as any point in California, must give way to the name of an establishment, which, if not built after the grant was made, was before that time at least an insignificant point without a name, and those rivers which are set down as landmarks must be disregarded to conform to modern ideas of propriety.

44. How then stands the settlement of Capt. Sutter in reference to his grant? Men came and went perhaps at his bidding. He may have induced large numbers of persons to settle temporarily at the fort on the American river, and on the east side of Feather river. But this was not settling his grant; and if he made any attempt to induce a settler to go upon this land within the limits set down in his grant, the fact does not appear; and consequently, even conceding that the kind of settlement proved would have been a compliance with the terms of the grant, no settlement was made upon the land; consequently, whether it was by mistake, inadvertence, or disregard of the authority contained in his concession, he cannot be entitled to the benefits of a compliance.

45. The term New Helvetia cannot locate the grant, as that term, if it had any assigned limits before the grant, was confined to the small settlement at the fort. The petition of Sutter to the governor speaks of the necessity of an enlargement of his establishment; thus it would appear asking for other lands than those he then occupied, though he had a settlement at both places. The language of his grant is not in-

cluding his establishment named New Helvetia, but in his establishment showing that he considered "his establishment" much larger than his fort, and limited probably by no more distinct or definite appellation than "frontiers of the north."

46. But it is said the government of Mexico recognised the rights of Captain Sutter in various ways, and the claimant has placed in evidence the expediente formed in the application of Wm. A. Leidesdorff for a tract of land on the American river, and east of Sutter's establishment. Mr. Leidesdorff petitions for eight leagues of vacant land, adjoining the lands of Mr. Sutter, August 29th, 1844. Manuel Jimeno, same day, orders Mr. Sutter to report. John A. Sutter writes, of the date August 4, before the petition, that the land is vacant. Jimeno reports that the land petitioned for is vacant, and so near the place of Mr. Sutter that it may be granted. Micheltorena then decrees to Leidesdorff the land on the American river, bounded by the land granted to the colony of Mr. Sutter, and by the hills on the east. By this it is sought to prove that there was a grant to the colony of Mr. Sutter, and the government so understood the truth to be.

In order to understand the legal effects of this proceeding, it will be necessary to examine how these expedientes are made up. Capt. Sutter lived, or at least had an establishment, near the land petitioned for. The inhabitants, and those wishing to settle in that part of the country, had no means of knowing where Sutter had a right to occupy in any other way than by examining his actual improvements. Capt. S. had settled there without title, when there was no other person asking for land in that section. He had got a paper-title to some place in the vicinity, and had actual possession of the land about the fort. It was called in common conversation Sutter's land. It might have been, and probably was generally understood to be, his land in the same way that we now take the actual possession of land under a claim of title to be the owner until we investigate the matter, and find out the defects in his claim of title. In making up the expediente for Leidesdorff it was called Sutter's in the petition, and bounded by the land granted to the colony of Sutter in the grant given to Leidesdorff. It does not appear that the governor examined Sutter's title-papers. The governor who made the grant to Sutter had gone out of office, and in making up an expediente for a tract adjoining the fort of Sutter without examining the matter, but taking that for granted, the establishment was named as a boundary.

47. Now, what is the law on this point? It is evident you cannot go into the title of A to find whether B has title to a different tract; and if one is referred to in the other by way of description, those words of description could not have a governing influence in a title wherein the words were not inserted. If the claim of Sutter should be rejected or located north of the American river, that would not, of itself, destroy the Leidesdorff grant; or if words had been inserted which denied any grant to Sutter, they could not, in any way, vary or change the force and effect of the conveyance to Sutter; and the converse of this propo-

sition is equally true. If Sutter's grant had not vitality in itself sufficient to support this claim, no words in any other grant could infuse any new life into this. I once saw it stated that by injecting blood warm from the veins of a young and vigorous person into the arteries of an old and infirm one, the limbs that were before weak and decrepit became supple and vigorous. But I believe that idea has been exploded; and I think this effort to infuse new life into the claimant's title in this case, by infusing into its tissues vitality from another grant, will be equally abortive. The grant to Sutter is either a good one or it is not. If it is, it will stand without the aid of another grant; if it is not, that other grant will not rectify any defect.

48. Another effort of an analogous character is made to prove a recognition of Sutter's claim by the Mexican government; the evidence is found in Mr. Proudhon's deposition. In 1845 he went with one Gen. Castellero to effect a purchase of New Helvetia of Capt. Sutter, and made him certain offers, which were refused. It is submitted that this evidence in no way varies the legal effect of the terms of the grant, or failure to comply with conditions, or its want of vitality for any reason. In the first place the order of Castillero is not produced, and no proof of that order, other than the order itself, can be received till its loss is shown. But if an order is admitted that came from the general government, who knew nothing of the grants in California, and the offer was made without knowing any of the facts, it is submitted that any number of such offers would not vary the grant. Again, the offer was to purchase New Helvetia, and Capt. Sutter, in a deposition filed in case No. 6, says that New Helvetia was co-extensive with his grant, extending up to the Buttes, and the offer was to buy him out wherever his rights might be, and it may be to buy his improvements on the land of the government. But more likely the offer was made to get rid of a foreigner whom the government distrusted, as the troublous times of 1846 were foreseen. The offer was made by a government officer upon information he had, and if, on examination, he could have refused to buy, and the Mexican government could have asserted her right to the land, such offer would not be considered as conferring title. The evidence of J. P. Leese proves that the government desired to get rid of Sutter, as one of the conditions upon which they were instructed to purchase was that Sutter was to leave the country. Documents recently filed in the case from the archives show the desire of the gov't to get rid of Sutter, and the object in making the offer. The proceedings relative to the Russian settlement also show that such offer admitted no right in the property in the land, but that the authorities were willing to pay a large amount of money to induce these foreigners to yield up their several possessions, and retire from the country, where their occupancy was by permission merely, and without title in the land where they were established.

49. It was decided in the case of U. S. vs. Low et al., reported in 16th Peters' Supreme Court Reports, page 162, that lands surveyed must be at the place named in the grant, otherwise it would be a new

appropriation. This principle, it is believed, has never been doubted, and if it is applied in this case, nothing but a formal conviction of a mistake, if one had been made, could change the legal effect of the terms of the instrument declared on. But there is no proof whatever that there was any mistake on the part of the government in locating the grant.

50. We will now turn our attention to the alleged 22-league grant to the claimant and his son. The original of that claim has not been produced, and we submit that there is no sufficient proof of the execution and delivery of a document corresponding to the paper filed, purporting to be a copy.

John Bidwell, 1st deposition, testifies: I know Capt. Sutter; in 1844, made application to Gov. Micheltorena for a grant of the surplus, and I suppose it was granted to him; I don't know of any compensation received by him for his services unless by said grant of land. I accompanied Capt Sutter to Monterey when he applied for the Sobrante, and remained there till he left. Mr. Bidwell was in the employ of Sutter from 1841 to 1846.

Francisco Arce says he drew for Capt. Sutter a petition for the Sobrante, which was passed to the governor, and went through all the customary steps and was returned to the office again, when I believed it was delivered to Capt. Sutter.

Juan Castañeda knew that Capt. Sutter presented a petition on behalf of himself and son, which was acted on in the usual form and granted; he drew the deed, and the governor executed it at Santa Barbara in his presence. The petition was presented in Oct., 1844, and granted in February, 1845; think paper marked C copy.

Jimeno was secretary from 1842 to August, 1845. A petition was presented for the overplus in 1843 or 1844 by David Spence. The governor asked me if it could be granted; I replied, there was no objection. He then stated that it was very well, and it remained to be matured at another time. The governor did not wish to grant this and other petitions till he had been to examine in person. He was prevented from going, and the petition was not granted, so far as I know.

John S. Fowler says, in a second deposition, that he had both the grants in his possession, and they were destroyed by fire in 1851, and swears to copies.

H. L. Ford swears that Capt. Sutter in 1845 showed him the Sobrante grant, and he swears to a copy.

John Bidwell swears, in his deposition taken since the appeal, that he was with Capt. Sutter at Santa Barbara in 1845, and remained with him till 1846; he thinks if Sutter had received a grant for him and his son in the year 1845 he should have known it, and that the first time he heard of the Sobrante grant was after the land commission was organized.

Tod Robinson swears that it was his business to examine land titles about Sacramento, and the first time he heard of the grant was after it was filed before the land commission.

Mrs. Hopper testifies that Capt. Sutter told her that he had applied for such a grant, but that he did not succeed in getting it.

H. A. Caulfield swears that Sutter under oath testified he had no other grant than the one of June 18, 1841; and James McClatchy swears to like matter, and to statements made by Capt. Sutter to like effect.

Jas. C. Zabriskie swears that in 1850 John S. Fowler had two papers purporting to be grants in his possession, and he thinks copy marked C is a true copy. The Sobrante grant was dated about November, 1844.

A recital in a deed referred to in the deposition of Zabriskie, page 135 transcript, refers to two grants, one dated June 18, 1841, and the other about the month of November, 1844.

51. The existence and authenticity of this document mainly depends on the depositions of Juan Castañeda and Henry L. Ford. The former of these gentlemen was not cross-examined, and he swears that Micheltorena executed the deed in his presence, and the latter of whom swears that he saw the grant in Sutter's hands in 1845.

Fowler's testimony, also that of Zabriskie, only goes to the fact of such a paper being in existence in 1850, and we will notice that in its proper place.

These two witnesses evidently intend to swear to enough to authenticate the claim, and if they fail, it is from being over-zealous. There is no evidence of the issuance of the grant produced from the archives. This of itself is a suspicious circumstance. The law of 1824 and regulations of 1828 required a note of the issuance of each grant to be made, and I have no doubt every genuine grant issued by Micheltorena was registered.

52. A question of law arises in this connection which ought to be fatal to this part of the case: the law requiring these records to be kept. The best evidence of the issuance of the grant after proof of the loss is the record from the archives; and if it is not found noted there, it is strong proof that it never was issued; and until the claimant has sought diligently for such record, he cannot be let in to prove the grant aliunde.

53. It is evident from the deposition of Jimeno that Micheltorena refused to make the grant in 1844, when petitioned for, and the reason given is also given in numerous other cases in the Sacramento valley; Jimeno was secretary till Micheltorena abdicated, and he never knew of its issuance, and if signed at Santa Barbara it was not according to the deposition of Castañeda, upon a petition presented there and then, but upon the petition presented in 1844. There is no evidence that this petition was before the governor after he had refused the prayer. Bidwell testifies, that if the grant had been sent up by a courier he should have known it; he went to Santa Barbara and returned with Capt. Sutter; was with him all the time, and remained with him till 1846 as his confidential agent and clerk, and thinks the matter must have been known to him if the grant had been issued. How could it be

otherwise? Bidwell made it his business to hunt places to locate grants; made maps to go with petitions; lived with Sutter; conversed freely and frequently with him, and must have known if such a grant had been issued.

54. How did it happen that Ford should, in the presence of one person (now dead), get a sight of that grant? Is there any reason assigned why he and Sutter should discuss, interpret, and construe this identical grant? Ford swears that Exhibit C is a very good copy; he had seen the original in 1845, and after 10 years swears to a copy (not compared or authenticated) as a very good one; this is a remarkable instance of a tenacious memory, or of improvident swearing, and the simple fact that the witness is willing to identify a copy under the circumstances as a true one, should induce the court to take his testimony with many grains of allowance. He is certain that Micheltorena told the soldiers he had given Sutter all the land he asked for, and had made a general title, &c., manifesting an anxiety to identify the Sobrante grant. He says, in answer to the last question put, that he speaks from his recollection of the original grant. In answer to the thirteenth (13) question on cross-examination, witness says he does not recollect any boundary in the grant shown him, except the northern; that was the Three Buttes. Now look at the copy filed, and it will be seen that no boundary is mentioned therein, such as he represents; those objects appear in the 11-league grant, and if any grant was shown him it was the Alvarado grant, and the imagination of the witness supplied or changed the grantor, grantees, date, and quantity.

55. Especially are we led to the conclusion that no such grant had an existence till about the time the petition of claimant was filed in the land commission, when we consider the profound secrecy with which it must have been kept, and the positive oath of Sutter himself that he never had such a grant, with his various statements to the effect that his land was claimed under his 11-league grant, up about Hock Farm; and the recital in his deed, with the deposition of Zabriskie, strengthens our position. If he had such a grant at the time the deed bears date, he might and would have inserted the true date of the instrument in his reference to it. In all probability, at the time the deed was made, they (those who controlled Sutter's affairs) intended to produce a copy of about that date (Nov., 1844,) to fit the application in August of that year; they had not settled yet upon the amount, as they still retained it at 11 leagues, and when they first made the grant they fixed it of that date. (See Zabriskie's deposition.)

56. The reasons for this change of programme are not given, but, doubtless, they were thought to be adequate. A man who could be induced to swear to a copy, when he had not seen the original in ten years, could be induced to swear to one date as well as another; and the copy relied on was dated Feb'y 5th, with a view to fix such a time as the governor and Sutter were together.

56½. If the paper marked C is a copy of an original document, some person must have taken that from the original. When was it

made? Who took it? For what purpose was it taken? These are pertinent inquiries; and we may subjoin, why did not the claimant produce the party who drew it from the original? When the papers of Fowler were burned, some one must have had a copy, or else this paper has been drawn without the original. If there were a copy in the hands of Fowler or any other interested party, the person who drew it would be the proper witness to prove its terms and authenticity, and it is incumbent on the claimant to produce that best evidence; and not having done so, we are left to infer the motive. This copy might as well have been made in 1852 as earlier, and the proof could have been just as positive.

If Sutter had such a grant, why was it kept secret? Why did he not, when he recorded his Alvarado grant, also record his 22-league grant? (See deposition of Joseph Clough.) Why did he not claim 33 instead of 11 leagues? (See his deeds on file.) Why did he not swear that he had another? and instead of denying it, why did he not inform those making inquiries that he had such a grant?

Mr. Bidwell says Sutter claimed the same amount of land before, that he did after Feb'y, 1845; and S. Norris gives the extent of Sutter's claim in 1844, and shows it was the same as he claimed after 1845.

58. The deposition of John S. Fowler cannot be relied on as of much weight. He did not understand Spanish. He had never seen Micheltorena write. He was not acquainted with Spanish grants. He was largely interested, and no doubt, if a grant was forged, had a part in the matter; and if he is not impeached, his testimony is not entitled to much weight. His character is at least doubtful. He swears at random. He was largely interested, and his interest is not shown to have passed away from him. He told witness Mace he was interested after the oath was taken; also numerous other witnesses. His interest appears by copy of deed, and by the evidence of persons who conversed with him at different times. If this does not render him incompetent to testify, it, at least, will make his testimony incredible. From the foregoing considerations, we conclude there is not sufficient proof of the making and delivery of the 22-league grant to authorize the court in finding the fact to be that it was made and delivered.

59. On the supposition that the document was made and delivered, what are the legal results?

Castinada swears that Sutter represented to the governor that he had distributed the former grant among his colonists, and upon such representation the grant to twenty-two leagues was signed. We know by the proofs in this case that Capt. Sutter never did distribute all the lands comprehended in the eleven-league grant; and it is not shown that he ever distributed, within the meaning of the law, a single vara of the land to any person. Certain it is he is now prosecuting this claim in his own name, and for his own benefit, without showing any conveyance to him from any person to whom he had distributed the same. The conclusion, then, is irresistible that when he made that represent-

ation to the governor it was without foundation. He cannot come into a court of equity and ask for a specific performance with his hands thus tainted with fraud.

60. The grant, if made at all, was illegal in this respect: one of the grantees was a minor and a non-resident. The oldest son of Capt. Sutter came to California in 1848, and at that time was not twenty-one years of age. It is provided in the XVth article of the law of 1824, (Rockwell, page 453,) that no person by virtue of this law, who shall acquire the ownership of lands, shall retain them if he shall reside out of the territory of the republic. At the date of the grant the son resided in Switzerland, and consequently was incompetent to hold lands here by reason of his foreign birth and residence, and because he was a minor. That part of the grant was clearly illegal, and the son took nothing by the concession.

61. The twelfth section of the colonization law of 1824 provides that no person shall be allowed to obtain the ownership of more than one league square of irrigable land, four superficial leagues of land dependent on the seasons, and six superficial ones for the purpose of rearing cattle. On the hypothesis that the grant was duly executed and delivered, it was clearly in contravention of the law above quoted, and the grant professes to be in accordance with that act. The only grantee in the country had, before that time, all the land he could hold, and the grant was obtained by misrepresentation as to the distribution of the lands of the former grant. An application is now made to the equity powers of this court to confirm to the petitioner thirty-three leagues of land. Before the court can comply with the petition they will require the claimant, at least, to clear himself of the imputations of fraud.

62. The instrument recites that John A. Sutter and his son have solicited the surplus of land within his rancho, named New Helvetia, as laid down on the map which accompanies the espediente, (erroneously translated,) and then says: "I have conceded to them the mentioned land, declaring in them the ownership by these presents, subject to the approval of the departmental assembly." There are no other words of description contained in the document. No map was preserved in the archives, and there is no connection whatever shown between the words of description in this paper and any map whatever. Counsel may ask the court to draw on their imaginations for the connection between the map filed and this grant, but a court of equity will hardly go so far as to presume any material fact in favor of a grant coming to light under the circumstances attaching to this.

63. The map of the country between Feather and Sacramento rivers south of an east and west line drawn through the Buttes, would comprehend vastly more land than the whole thirty-three leagues, and it would be impossible to create the land called for with certainty even if a confirmation could be had, as the calls in the concessions are made with reference to a certain quantity of land to be taken within certain boundaries, which boundaries contain much more land than both

grants call for. The grants also call for a judicial survey, and each contains a provision for the reservation of the surplus which may result for the benefit of the nation. The rule was laid down by the board of U. S. land commissioners, in the Honcut case, and has been repeatedly reaffirmed, that where a certain quantity of land was granted within a larger tract the grant was void for uncertainty, unless the specific land granted had been ascertained by a judicial survey, by a proper officer, under the Mexican government. Now, in this case, there can be no doubt about the quantity of land within the points named. A map is filed with the township lines accurately marked, and the calculations are easily made. There are between three and four hundred square miles of land between the Sacramento and Feather rivers and the Three Peaks. Capt. Sutter sold to Grimes about two hundred square miles of land on the east side of the Sacramento, and north of the American. This is exclusive of the land claimed south of the American river and east of Feather river, which may be set down at an addition of two hundred square miles of land, over all of which land the claimant exercised jurisdiction, and all of which he has sold, as appears by his deeds on file. Here is ample room to locate the whole 33 leagues; and if confirmed to him, the whole land must be taken within the boundaries set down in the first grant.

64. The grant of Sutter excludes the lands liable to overflow, and much testimony has been adduced to show the character of the country claimed by Sutter and his grantees. An attempt was made to show that there was a small margin along the Sacramento, and not liable to inundations; but the truth is, and it sufficiently appears in the evidence, that the country for miles each side of the rivers is periodically inundated by the impulse, swelling and currents of the rivers. True it is, that the banks are slightly higher than the land back, but it is nevertheless liable to overflow. There is no instance of a river, such as the Sacramento, having its banks above high water. The Mississippi is of the same character, and liable to overflow. The city of Sacramento is a standing monument of the truth of the assertion, and her debt has been doubled to protect herself from their annual overflows. (See depositions of John Bigler, James M. Sanford, Mr. Cornell, and others.) This land is excluded from the terms of the grant, and must be by the decree.

65. Again by the act of Congress of 185 , granting to Arkansas the swamp and overflowed land, and also granting those lands within her limits to other States. This is the construction given to the act by the Department of the Interior, and that all the swamp and overflowed land of the United States within the limits of California, by that act, passed immediately to the State of California. The legal title had not yet passed out of the government of Mexico when the treaty of Guadulupe Hidalgo was signed.

There had been no approval of Sutter's claim by the assembly departmental or the supreme government, and now the State of California having the legal title, the United States cannot, by the issuance of

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There had been no approval of Sutter's claim by the assembly departmental or the supreme government, and now the State of California having the legal title, the United States cannot, by the issuance of

a patent, give any rights as to those overflowed lands to the claimant, (see Manard's Heirs vs. Massey, 8th Howard,) and the decree of the court, if the claim shall be confirmed at all, should exclude such lands, leaving the boundaries of this quality of land to be ascertained by the surveyor general.

66. The idea advanced by the brief of claimant, to the effect that there is a small margin on the banks of the river not liable to overflow, and that that narrow strip of land was the land granted, is certainly untenable. The fort of Sutter was on the high lands, and not on the margin of the river; Hock Farm also is on high ground, and 11 leagues of land not subject to overflow are easily surveyed at and near the present residence of the claimant, but they cannot be located in the form prescribed in the Fremont case at any point south of the tract where Hock Farm is situated, between the Sacramento and Feather rivers.

67. Before closing this brief, it may be proper to advert to the question of the admissibility of some of the testimony presented on the part of the government.

68. Are the witnesses who hold adversely to the claimant, and as settlers on some of the land covered by the map of the claimant, competent as witnesses? None of them are within the lines of his real claim. The common law rule adopted by statute in California, (see Laws, 1854, p. 66, sect. 393,) makes the test of interest, "that he will gain or lose by the direct legal operation and effect of the judgment, or that the record of the judgment will be legal evidence for or against him in some other action."

By the act of Congress the witnesses cannot be pre-emptioners on land claimed under Spanish or Mexican grants, so that in point of law they cannot now be pre-emption claimants. The most that can be said is, that they hope or expect to be at some future time, should the land prove to be government land; they have not, therefore, any present vested or direct interest, and it is a mere contingency whether, even should the claim be rejected, they ever will have. They may not then be living; may not choose to remain on the land, or may be disqualified, in some of the ways specified in the act of Congress, from claiming as pre-emptors; in short, let the result of this claim be as it may, they get the land in the end, if at all, by purchase. Should these claimants succeed, they may become the owners by purchase of them; should the claim be rejected, they purchase of the government by paying cash for the land, and by performing the onerous conditions required by the act of Congress, to give them a pre-emption right. They never can get the land without buying and paying for it, let the case go as it may; in the one case they buy it of the private claimant, and in the other case of the government, for it will be remembered that there is law donating public lands in California to settlers. By residing upon it and having the proper qualifications, they merely obtain the right to buy the land at the minimum price, and it is in *now* way shown that the burdens attached to a pre-emption, personal and pecuniary, are not equal to the full value of the land. It is in no way shown by the evidence that the witnesses would make any pecuniary gain by

obtaining a pre-emption right to the land, i. e. the right to buy it and pay for it. It is not shown that the land is worth any more than they would have to pay for it, should they choose to hold it in that way, and the burden of proof lies on the party objecting.

A standard writer on the law of evidence says that a witness is "always presumed to be competent; the burden of proof is on the objecting party to sustain his exception to the competency; and if he fail satisfactorily to establish it, the witness must be sworn." 1 Greenleaf's Ev., page 504, sec. 390. Says the same writer, in the same section:

"The true test of interest of a witness is, that he will either gain or lose by the direct legal operation and effect of the judgment, or that record will be legal evidence for or against him in some other action. It must be a present certain and vested interest, and not an uncertain remote or contingent. Thus the heir apparent to an estate is a competent witness in support of the claim of his ancestor, &c."

The heir apparent was competent. Why? Because he had no certain vested interest. He might never live to be the heir, but might die before the ancestor. So these witnesses may die before the final rejection, or before the time would come when they could pre-empt. Again, the heir may be disinherited by will; and so Congress may, before the time of pre-emption comes, dispose of these lands so as to cut off the prospective right of pre-emption. This has been done in a multitude of other cases, when lands, which for years have remained open to pre-emption, have been given for railroad purposes, or made liable to and been taken by land warrants; and others still have lost the pre-emption to the lands on which they have for years resided, for want of the money to pay the price before the public sale; and for aught the court can know, such may be the case with these settlers.

In short, these witnesses have no fixed, vested, present or certain interest. They are just as competent as if they lived entirely off the land. They may feel *and* interest in the question, but this does not disqualify their interest in the question, if they have any; is exactly balanced. If the judgment is in favor of the United States the result is exactly the same to them as if in favor of the claimant. In either case they must leave the land or buy it, and in either case they may not be able to buy the land at all, for the government may otherwise have disposed of it before them, or the claimants may not choose to sell.

There can be no pretence of any interest.

Brief on the part of the Appellee.

In the District Court of the United States for the northern district of California.

THE UNITED STATES, Appellant,
vs.
JOHN A. SUTTER, Appellee.

(1) The genuineness of the grant to John A. Sutter of the 18th June, 1841, is admitted. The whole point of the argument of the govern-

ment seems to be, first, that Sacramento was not included in the grant; and, second, that inasmuch as the settlements of New Helvetia were about the fort, they are not a compliance with the condition of settlement, if the land properly granted lies between the junction of Sacramento and Feather rivers.

It is denied that the map in the record is sufficiently proved as the one, or a copy, which went with the grant and expediente. It is submitted, that the land would pass under the description of "New Helvetia." 4 Bacon, 522. The false demonstration as to latitude may be rejected. 27 Eng. Com. L. Reps., p. 28; 2 Metcalf, 41; 2 Cushing, 392.

The counsel for the government admits that such is the law, but seeks to evade the force of the principle by saying that it must previously have been known by such name. No authority can be shown for such a qualification; that the country was known by that name previous to the date of the grant is sufficiently obvious from the fact that Sutter so designates it in his petition to the governor. It is denominated as his settlement of "New Helvetia," and all the proof shows that to have been at that time the fort now known as Sacramento, where he had extensive improvements and cultivation.

(2) Independent of the map, therefore, Sacramento is embraced in the grant. According to Lord Mansfield, a description of land by its occupiers and quantities is sufficient. Lamb vs. Reaston, 5 Trunton, 207. 1 Eng. Com. Law Rep., vol. 1.

It is in proof from all the witnesses, that "New Helvetia" extended from the lagoon below Sacramento to the "Buttes." How, then, can the settlement of "New Helvetia" itself be excluded—certainly, at that time one of the best known settlements in northern California, and recognised as a portion of New Helvetia in the subsequent grants to Leidesdorff and Grimes?

It is attempted to be excluded from the grant by proving, that the latitude mentioned in the grant for the southern boundary is more certain in description than the establishment or settlement "Nueva Helvetia." The proof shows that the latidude both on the north and south are incorrectly stated, and that in fact they are represented a great deal too far south with reference to their true position on the earth's surface. It appears from the evidence that they were stated in the grant from an observation of Vioget, which he declared to Sutter at that time could not be relied on, as his instruments were imperfect.

(3) It is argued strenuously by the counsel for the government, that the Buttes, or Tres Picas, must prevail over latidude as to the northern boundary, because the most certain. Why, then, is not the "fort" and settlement of "New Helvetia," south of the American, more certain than the latitude 38° 49′ 42″, erroneously given as the southern boundary? The American river, the fort, the settlements, and the cultivated fields, were objects as prominent and well known as the "Tres Picas;" they were the goal of many an emigrant who never had heard of the "Tres Picas." As objects both natural and artificial, they were both equally operative and controlling as a boundary.

Independent of the map, therefore, there was given in the language of the grant, as the base of the survey, the Sacramento river from a line through the "Tres Picas," south so as to include the fort or settlement of New Helvetia; and with these points given, and the quantity designated, both the Mexican law and the acts of the U. S. Congress would determine the form of the survey in a rectangular figure, if there were nothing else to control; no surveyor could have any difficulty in surveying either eleven or thirty-three leagues with such located calls.

There is no pretence for saying that the map is not proved. Vioget, who made the map, swears that the copy on file is substantially correct. It is immaterial whether it is referred to as Exhibit A or B; he proves the identity. The same thing is proved by Alvarado, who made the grant, by Fowler and others. There is nothing to warrant the insinuation of the squatters that the southern boundary was interpolated on the map. It must be true, beyond controversy, as Alvarado states, that he gave them, in the grant, from the figures of the map. No party in interest would have been guilty of the folly of interpolating the latitude so widely variant from its true position. Besides, Vioget states that he fixed the latitude south of Sacramento, at the lagoon. This lagoon is delineated on the map, together with other prominent objects, which is more certain in description than latitude. The objects mentioned on the map are just as much landmarks as though they had been specially mentioned in the language of the grant. A map may be used not only in aid of the calls in the grant, but to control and correct them. 4 Wheaton, 449; 6 Humphrey, 400; 17 Mass'tts, 207.

The map delineates not only the rivers and the establishment of "New Helvetia," south of the American as well as north, but the lagoon, as a southern boundary. It also gives exterior lines to the map, and a scale by which the length and breadth of the grant may be determined. The governor grants according to the whole map, as the grant itself declares, and as he testifies. It is admitted that the survey and map of Vioget would have no efficacy without the adoption of the governor. He grants, not according to the survey, but according to the boundaries given, and the map in its totality. It is, therefore, absurd to say that the fort south of the American is not embraced in the grant. It presents nothing more than an excess of land within the exterior boundaries, much less than in the Frémont case, and with far greater certainty in description. The same right of selection will be acceded to the grantee. 17 Howard; 4 Bacon, 525.

It does not, therefore, admit of doubt that the families settled at the fort were located on the grant within a reasonable time; the proof shows that there were more than a hundred families introduced within its limits by Sutter. There are no other twenty grantees who expended so much labor and capital in payment of their grants. His services to the Mexican government, and to the emigrants from the United States, were eminent.

The grant to Sutter of 1841, as is argued by the counsel for the government, vests in him only one-thirteenth part of the grant. Such an

argument contradicts the language of the instrument itself. The third condition declares that the grant was "made to him," Sutter. The fourth condition requires that the property shall be "confirmed unto him." The grant to Sutter was prior to the grant of Gulnac, and precisely similar, which has been confirmed both by the commission and by this court as vesting the interest exclusively in Gulnac. It was obviously a grant to an individual of an amount of land which the law authorized one grantee to receive upon the condition of the settlement of twelve families. Empresario grants, strictly speaking, were not limited to eleven leagues, as shown by the practice in granting lands in every Mexican department, and especially in Texas. The decree of the Mexican Congress of 1824 presents the empresario to make his own terms with the settlers. The colonization law of Coahuila and Texas so far modified this regulation as to require the settler to receive a particular lot of land by grant directly from the commissioner of the colony. No provision of this character is to be found in the law of 1828, for the regulation of lands in California. It was evidently the intention to vest the fee in the empresario, and to permit him to make such contract with the colonists as might be agreed on. There is nothing in the regulation that requires him to convey any land to the colonist. The rights of Sutter, therefore, would not be varied, if this were admitted to be a colonization grant; but the point seems to have been raised in the case of Gulnac by the secretary, and ruled by the governor that grants of this character were not empresario grants.

It would be no objection to a confirmation in this case, if it were admitted that Sutter took for himself and in trust for twelve others. The legal title vested in him by virtue of the governor's grant, as the Supreme Court of the U. S. held in the case of Fremont. He would, therefore, be the proper party to present the claim for confirmation to the commission, and the patent would *ensure* to the benefit of his cestui que trust. It is noticeable that the grant itself expressly requires that it shall be confirmed to him, which shows that the Mexican authorities understood that the title was, in the first instance, to be vested in him, even if he was bound to divide it among the colonists subsequently. Indeed the empresario could have no control over his colonists or his contracts with them, unless such were the case. Under any aspect of the case, it is a question between Sutter and third parties, and does not differ from that presented in Perchman's case, 7 Peters, page 51, and cannot be heard here. There are no adverse claimants, and the patent will *ensure* as well to the benefit of Sutter's colonists as that of his other vendors.

The proposition that a grant to Sutter and twelve others whom he might associate with him is not sufficiently certain, as the grantees need not be seriously discussed. It is certainly competent to prove who were the twelve selected; they will have no difficulty in doing so after the patent emanates, if they took anything by force of the grant. Id certum est quod certum reddi potest. 4 Bacon, tit. Grant, p. 509; Hopstead vs. Hampstead, 2 Wend., 109. It was clearly the

duty of Sutter to present this title for confirmation for the benefit of his colonists, if he had any, as well as that of his other vendors. The charge of fraud against him for having represented it, comes from those who have squatted on the land which they wish to appropriate, should it be deemed that this presentation of the title is insufficient. The action of the governor in the Gulnac case must be sufficient to show that it was not necessary in an empresario grant that the names of the colonists should be inserted in the grant. Such a grant implies a contract on the part of the empresario that in a given time, or if none be mentioned, within a reasonable time, he will find and introduce settlers. In the case of Arredondo, 6 Peters, it was said that where no time was mentioned, the grantee had his lifetime. Although the first grant to Sutter is spoken of in the application and in subsequent titles as a grant for a colony, yet all the action of the government, as well as the grant itself, shows that the fee was vested in Sutter, subject to the condition of introducing twelve families or colonists. Under the regulations of 1828, the legal effect of a colonization grant was to vest the fee in the empresario.

That such is the true construction is evident from the language of the act of the Mexican Congress of 1824, and the regulations of 1828. The 14th art. of the colonization law of 1824, adopted by the Mexican Congress, declares: "this law guaranties the contracts which the empresarios may make with families which they may bring out at their own expense, provided that they be not contrary to the laws." The 16th art. enacts: "the government, (the federal executive,) in conformity with the principle established in this law, will proceed to the colonization of the territories of the republic." In conformity with this law, the President issued a general decree or regulation for the colonization of territories in November, 1828, authorizing the governors to grant lands to "empresario families or private persons, whether Mexican or foreigners, who may ask for them for the purpose of cultivating and inhabiting them." The 7th art. provides that "the grants made to empresarios, for them to colonize with many families, shall not be held to be definitively valid until the approval of the supreme government be obtained, to which the necessary documents must be forwarded along with the report of the territorial deputation."

Art. 10th provides that "no contract shall be admitted for a new town, except the empresario bind himself to present, as colonists, twelve families at least." It is said that the land in Sacramento is subject to be overflowed, and therefore is excluded from the grant. That is a question for the surveyor, and not for the court. The line of overflow must be determined on the ground by an expert. Nothing is excluded but the swamp land, which is unfit for cultivation. The word used in the original expediente is "cenagados," marshy or swampy land—land so overflowed as to be unfit for use. The word "cenegados" is also used, which means overflowed land. The intention was to grant land fit for cultivation. The Department of the Interior has, in instructions to the surveyor general, defined overflowed

land to be that which is so overflowed for a majority of years in the cropping season as to be unfit for cultivation. The land on the Sacramento is benefited by the overflow. A crop can always be made after the water subsides. As well might it be said that the banks of the Nile or the Mississippi were rendered unfit for cultivation by the water. The overflow is the great source of fertility.

The grant and the map both assume that the high land is on the bank of the river, which is also the fact. It is also in proof that Sutter had the largest portion of Sacramento enclosed, and under cultivation. We submit to the court that the Sobrante grant is sufficiently proved. The fact that no expediente of the second grant is produced is not a material circumstance affecting its validity or genuineness. It is in proof that many of the records, in connection with land titles, have been lost. It is well known that a book of expedientes or grants by Micheltorena was burned in the possession of Capt. Folsom, in the great fire, as he has testified in several cases. Both of the original grants of Sutter were destroyed at the same time. Castañada, the secretary who signed the grant, has sworn positively to its execution and contents, and that the copy on file is a true copy. Arce swears to the same thing, and to the delivering of the grant. Capt. Ford, who was an officer in Fremont's regiment, heard Micheltorena say that he had granted to Sutter all the land that he asked for, and saw the title and map in his (Sutter's) possession in 1845. These witnesses are unimpeached, and are supported by Jimeno, Zabriskie, Fowler, and many others. Sutter conveyed most of his lands to his son in 1848, in which conveyance reference is made to both grants. Among the thirty or forty depositions of squatters taken in this case, one of them testified that he heard Sutter say, on oath, that he had no title. The statement is not very probable, and is contradicted by a deposition of Sutter taken in a case in a State court and produced in evidence here by the government, in which he says he claims under both titles. No formal delivery was necessary in case of a government grant. It is well settled, that when a grant or deed is beneficial to the party, its delivery will be presumed if it has been acted upon.

Church vs. Gilman, 15 Wend., p. 636. Delivery of deed presumed from possession. 14 U. S. Dig., p. 155; Deeds, II. Proof of actual delivery is not necessary in the case of government grants. A grant by government is equivalent to a conveyance with livery of seizin. Enfield vs. Day, 11 New Hamp., 520. A deed left by the vendor with his agent for registry is a sufficient delivery. 12 Ala., 734. A government grant is delivered when it passes the great seal. Mobury vs. Madison, 1 Cr., 137; Pet. Cond., 267. So with a corporation. 1 Hilliard, 298. The secretary says the grant was executed, which implies a delivery. A delivery to the secretary by the governor for registry would be sufficient. It cannot be matter of reasonable doubt that the limitation as the eleven leagues would not apply to Sutter as an empresario. It never was intended to apply, because it was intended that the empresario should reward his colonists with a portion of the

lands. Again, under the act of October, 1828, of the Mexican government, it was declared that "a non-naturalized empresario cannot reserve to himself a tract of land exceeding sixteen square leagues, which must be sold within twelve years, counting from the period of the acquisition of the property." Smidt, p. 341; Arrillaga, p. . This shows that there was no limit as to naturalized empresarios, like Sutter, in regard to the amount of land which he might receive in compensation for colonization. At all events Sutter would be entitled to sixteen leagues. His grant therefore be good to that extent, under any view, as a grant may be good for part and void for the excess. Winn vs. Paterson, 2 Peters.

The proof shows that, taking both grants together, Sutter has not reserved to himself more than sixteen leagues, as a great part of the tract was granted to others by the governor, with the consent of Sutter.

The grant to John A. Sutter, jr., was good; he was not an alien. It appeared from the proof that at the time of the naturalization of the father, the son was still a minor. Under the regulations issued by virtue of a decree of the Mexican Congress, it is declared by art. 8: "The naturalization of the husband, the head of the family, is considered as the naturalization of the wife and the minor children not emancipated." Schmidt, p. 347.

Again, in art. 9: "Children of Mexican citizens born out of the country, shall be considered as born within it." John A. Sutter, jr., was, under the Mexican law, as much a Mexican citizen as his father. He could have no other domicil than that of his father while he was a minor, by the rules both of the civil and common law.

2 Kent, (last ed.,) pp. 227, 532, and note. Hustand vs. Kuns, 8 Blackf. 347. Story's Conflict of Laws.

The change of the father's domicil, changes that of the son. Ib. § 46.

It should be remarked, that by the 16th art. of the regulations of 1828, the children of the original grantees are entitled to the Sobrante, as preferred parties.

There could be no limitation as to quantity in this case, because it was a title by way of sale. The consideration was valuable services, which in the case of Fremont is recognised as equivalent to money consideration. There is no doubt that under the decree of the Mexican government of April 4th, 1837, lands might be sold in payment of debts, and that under that decree numerous grants were made in payment for services rendered. A number have been confirmed by the commission, and it was held that this consideration exempts the grantee from settlement. Arrillaga, page 268; Translation in Rockwell, pp. 6, 27. After the exercise of the power by the Mexican authorities for ten years, it lies on the party objecting to show the want of authority. U. S. vs. Clark, 8 Peters, 436.

The limitation of eleven leagues was on strict colonization grants to individuals.

The decree of 1837 expressly repeals the colonization law, so far as it is in conflict with the power to sell. It is not to be presumed that the government would sell land or grant it in compensation for services, and then revoke the grant because the quantity was more than eleven leagues. Again, Sutter, as an empresario, had a right to sixteen leagues, and his son to eleven. There is no proof that he retained more than this, after deducting what was distributed to the twelve families. The fact is, he retained much less. The law does not prohibit a party's receiving a grant for more than eleven leagues, but declares that more shall not be retained. This, as a condition, would be abolished by a change of sovereignty, inasmuch as there is no such rule under the laws of the federal or State government. It is admitted and was fully proved, that the original and the Sobrante grants were both settled and occupied. The interest which disqualifies a witness is a direct pecuniary interest in the result. The test is, whether the witness will gain or lose by the judgment of the court. A witness is called to prove that he has settled upon public land, and that, therefore, he is entitled to a pre-emption, which will withdraw the land from public sale and give him a preferred right to purchase it at $1 25 per acre, although it may be really worth $1,000 per acre. To enable him to sustain the pre-emption, he must show that the grantee has no title to the property in question. He seeks to prove that fact by his own oath as to declarations made to him by the grantee.

More direct interest could not be imagined, and a more dangerous piece of evidence as against written government grants could not be stated. Here, in truth, is an association of squatters, who raise funds, employ counsel, and then offer to destroy the title by their own oaths. The witness claims by virtue of settlement and possession under the act of Congress; it is therefore a direct vested interest, adverse to the title, and disqualifies. Greenleaf's Ev., vol. 1, § 391–2.

It appears from the proof in the case, that a search has been made *made* in the proper office for an office copy of the Mexican grant for the Sobrante, but that the same cannot be found. It is also shown that a portion of the records were lost during the war, and that one book of records was burned in San Francisco, in the possession of Captain Folsom, after the exchange of the ratifications of the treaty.

Decree.

No. 319.

In the District Court of the United States for the northern district of California.

THE UNITED STATES, Appellants,
vs.
JOHN A. SUTTER, Respondent.

Transcript from board of commissioners, No. 92.

Stated Term, January 14th, 1857.

On appeal by the United States from the final decision of the board

of commissioners to ascertain and settle private land claims in the State of California.

Decree.

This cause came on to be heard at a stated term of the court, on appeal from the final decision of the board of commissioners to ascertain and settle the private land claims in the State of California, under the act of Congress approved on the 3d of March, A. D. 1851, upon the transcript of the proceedings and decision of the said board of commissioners, the papers and evidence on which the said decision was founded, and the petition of the appellants and answer of the appellee, and upon the further evidence given in this court, by leave of the court; and it appearing to the court that the said transcript has been duly filed according to law, and counsel for the respective parties having been heard, it is by the court hereby ordered, adjudged, and decreed, that the said decision be, and the same is hereby, in all things affirmed; and it is likewise further ordered, adjudged, and decreed, that the claim of the appellee, the said John A. Sutter, is a good and valid claim; and that the said claim be, and the same is hereby, confirmed. The land of which confirmation is made is situated on the American, Sacramento, and Feather rivers, and is known by the name of New Helvetia, being the same which was granted to the said John A. Sutter by grant duly executed by Gov. Juan B. Alvarado, on the 18th of June, 1841, and by a grant from Governor Manuel Micheltorena to the said John A. Sutter, and his son John A. Sutter, jr., dated February 5th, 1845; the first for eleven square leagues of land, as exhibited on the sketch annexed to the proceedings, and the second for twenty-two square leagues of the Sobrante or surplus of land within his rancho, named New Helvetia, as laid down on the map which accompanies the grant; the said land to be located according to the calls of the respective grants, as described and explained in the depositions of John J. Vioget, filed in the case, and within the following limits, to wit: On the south by a line drawn due east from the Sacramento river, so as to touch the most southerly point of a pond or laguna situated near said river, and about five miles south of the American river, as represented on the map filed in the case, and marked "B. P. L." exhibit to deposition of Juan B. Alvarado, March 15, 1855, which line is also marked on said map "Lindero latitud norte 38° 49′ 32″;" on the north by a line drawn due east from the Sacramento river to the southern base of the mountains known as the Buttes, and represented on the said map by the name of "Los Tres Picos," and from thence until it intersects the eastern boundary of the tract, as represented on said map and described in the grant, and in the depositions of the said Vioget; on the west by the said river Sacramento, and on the east by the margins of Feather river, inclusive. For more particular description, reference to be had to the copies of the grants filed and proved in the case, bearing date the 18th of June, 1841, and the 5th of February, 1845, to the said map marked "B. P. L." exhibit to deposition of Juan B. Alvarado, March